150 U.S. 159

RECORD, CASE No. 13,926.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 60.

THE EMPIRE COAL AND TRANSPORTATION COMPANY, APPELLANT,

vs.

THE EMPIRE COAL AND MINING COMPANY, J. D. RICHARDSON AND HORTON FALL, EXECUTORS OF WILLIAM H. EVANS, DECEASED, T. D. FITE, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED NOVEMBER 19, 1889.

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1 The Circuit Court of the United States of America for the Sixth Division and the Middle District of the State of Tennessee.

THE EMPIRE COAL AND TRANSPORTATION COMPANY
against
THE EMPIRE COAL AND MINING COMPANY.
} No. 2725. In Equity.

Transcript of appeal to the Supreme Court of the United States, prayed and allowed at October term, 1888, from decree dismissing the bill at the same term.

In said cause the following proceedings were had, to wit:

Bill.

To the honorable the judges of the United States circuit court for the middle district of Tennessee:

The bill of complaint of The Empire Coal and Transportation Company, a corporation regularly organized under the laws of the State of Kentucky and whose office is in —, complainant, against The Empire Coal and Mining Company, a corporation organized under the laws of the State of Kentucky and whose principal office is in Nashville, Tennessee, and James A. Manier, James A. Pigue, Thomas D. Fite, William Porter, and Horton Fall and James D. Richardson, as executors of the last will and testament of William H. Evans, deceased, all citizens of Davidson county, Tennessee, and William T. Glasgow, trustee, a citizen of the State of Maryland, defendants.

Complainant states to your honors:

First. That the complainant was at all the times hereinafter mentioned and is now a corporation duly incorporated in and by an act of the legislature of the State of Kentucky passed on the 2nd day of April, 1878, and entitled "An act to incorporate the Empire Coal and Transportation Company," being chapter 706 of the Laws of 1878, and that Exhibit "A," hereto annexed, is a true copy of said act and is, together with all other exhibits hereinafter
2 mentioned and annexed to this complaint, hereby made a part of this complaint (but such exhibits need not be copied).

Second. That after the passage of said act incorporating the complainant and on or about the 5th day of April, 1878, when the requisite amount had been subscribed, the complainant duly organized—that is to say, John H. Criddle, John P. Helms, William H. Bunch, William T. Glasgow, and Albert L. Blackman were duly elected directors, and the said Albert L. Blackman was selected by said directors the president of the company, and the capital stock of the complainant was fixed at $200,000, to consist of 2,000 shares of $100 each, all which was paid for in property and issued as full paid up and unassessible, and a set of by-laws for the government

of the complainant was adopted under and pursuant to the provisions of said act, and subsequently and on or about the third day of June, 1878, once amended, and that Exhibit "B," hereto annexed, is a true copy of said by-laws and amendment; that on the 6th day of May, 1878, Marion W. Lewis and Alonzo M. Carroll were duly elected directors of the company in place of the said William T. Glasgow and William H. Bunch, resigned; that the capital stock was, at the time of the said organization of the complainant, owned and held by the following persons in the proportions named respectively—that is to say, John H. Criddle, 665 shares; John P. Helms, 1 share; William T. Glasgow, 1 share; William H. Bunch, 1 share, and Albert L. Blackman, 1,331 shares; that the shares held by said Glasgow, Bunch, and Helms were given to them respectively by said Criddle and Blackman to qualify them as directors of the complainant, and that the said Glasgow and Bunch transferred the shares so held by them to the said Lewis and Carroll respectively, likewise to qualify them as such directors, when they were so substituted as such in the place of said Bunch and Glasgow as aforesaid.

3 Third. That at the time of its said organization the complainant became the owner of the unexpired term in a certain leasehold or mining privilege for fifty years from the second day of May, 1877, in about two hundred acres of land purchased by it from Albert Blackman and said John H. Criddle, a true copy of the lease for which is hereto annexed, marked Exhibit "C," and that said lease is duly recorded in the office of the clerk of Christian county, Kentucky, Deed Book No. 55, page 118; that the lands described in said lease contain a seam of semi-bituminous block coal of a very superior quality, which stocks for an indefinate time without slacking, disintegrating, or otherwise deteriorating and of a high percentage of carbon and a correlatively low percentage of ash, rarely leaving clinkers upon the grate bars when used as steam coal and which has always commanded at the mines and in Kentucky and Tennessee from one to two cents per bushel more than any other coals taken from the various mines situated on the St. Louis & Southeastern railway and than coals taken from any mines contributory to the Nashville market; that said seam extends horizontally over about one-half the entire area of said lands in a uniform thickness of about forty-two inches, and that the same can be easily and cheaply worked, being unusually free from sulphur and iron pyrites; that the said Blackman was the original lessee of the said mining privileges under said Exhibit "C," and when he took possession of the same under said lease there had already been opened a crude working which has been abandoned many years before, and the said Blackman, commencing on the side of the hill opposite to this working, opened new mines at two points, and, being then in need of ready money to continue the development of the property, he associated with himself in his enterprizes the said Criddle, and thereafter operated his mining business under the firm name or

4 style of the Empire Coal Company; that thereafter and prior

to the transfer of said leasehold to the complainant the said firm had opened the said two mines to a capacity of 3,600 bushels of coal per day and had built all necessary embankments, tramways, coal screens, weighing scales and house, a double-track trestle of about three hundred feet, suitably ironed with "T" rails, extending into the mines, with sufficient equipment of mining cars and all necessary appliances for the economical working and delivery of the coal upon cars for transportation to market, and had also built at a cost of about $12,000 a standard-gauge railway, ironed with substantial and new "T" rails, of about three-quarters of a mile in length, connecting the said mines with the said St. Louis & Southeastern railway by a switch; that said railway was of excellent material and workmanship and had then been in light use only a few months; that the same was in good order and repair and was in every respect as serviceable and valuable as when first constructed, and the said firm had also established a station at said switch called "Empire" and had ditched and drained the land, sunk air shafts and wells for ventilation, and had built on said lands two cottages, stables, and a blacksmith shop, and had repaired and improved five other houses and erected pumps to pump out the mines, and had also put upon the said properties various other improvements requisite to their complete development and had equipped the same with all necessary appliances and materials; that said leasehold, Exhibit "C," is hereinafter designated as the Brasher tract.

Fourth. That at said time of its organization the complainant had also acquired from the said Blackman in fee simple, which the said Blackman had purchased from G. Croft, and said deed is hereto annexed, marked Exhibit "I," a certain other tract of about twenty-three acres (hereinafter designated as the Croft tract), adjoining said leasehold property and lying between the same and the St. Louis & Southeastern railway; that said Blackman, and later his said firm of the Empire Coal Company, had also operated the said Croft tract up to the time of said transfer to the complainant; that a portion of the same had been plotted and laid out in streets and lots of about one hundred by two hundred feet in size. The main street had been cut and graded from about the line of the said Brasher tract to near the line of said St. Louis & Southeastern railway, which was crossed near said last-mentioned railway and paral-el with the same by another street connecting said main street with the railway station; that on six such lots abutting upon said main street a row of cottages, six in number, had been built at a cost exceeding three hundred dollars each, and upon a corner lot upon the same street a large frame store had been built at a cost exceeding eight hundred dollars; that the said cottages were rented at sixty dollars per year each, and were worth, with the lots upon which they stood, upwards of six hundred dollars each, and that the said store, with the two lots upon which it stood, was worth upwards of $1,400, and that about a half mile of the company's said railway was on the said Croft tract.

Fifth. That in addition to the above-mentioned properties the complainant also acquired from said Blackman and Criddle various

other mining privileges and other rights and interests in and to sundry and other tracts of lands in the vicinity of said above-mentioned properties, as will more fully and at large appear by reference to the Exhibits "D," "E," "F," "G," and "H," hereto annexed, which were *were* of great value.

Sixth. That the complainant, besides its operations of mining and transporting coal, was likewise engaged in a general
6 merchandizing business, which it carried on at said store building; that the stock in said store consisted of a large assortment of goods, such as is to be usually found in first-class country or general stores; that the traders at said stores consisted of the plaintiff's miners and the farmers and laborers in the neighborhood, and the profits upon the goods sold *was* at an average of about forty per centum of their cost price, taken all through, and that the conduct of such business required the investment of but a small capital, which was rapidly turned over.

Seventh. That the complainant also had a large quantity of personalty, consisting of, among other things, mules, harness, wagons, mining cars, tools and materials, and blacksmith iron and tools.

Eighth. That the complainant commenced business on or about the said 5th day of April, 1878, by continuing the operations of said firm, the Empire Coal Mining Company; that it then employed about eighty miners and laborers; that the said Blackman, as president, possessed and exercised charge of its mines, mining operations, and general management of its business, with power to contract, to employ, and discharge any and all subordinate assistants and officers, clerks, and agents he might deem necessary for the efficient prosecution of the complainant's business and to its best interests, to attend generally to its executive business, and to appoint by written authority a director to supply *pro tempore* his place as such president during his absence, as by reference to said Exhibit "B" will more fully and at large appear; that the powers of the other officers of the complainant are also set forth in said Exhibit "B," but that no executive committee of the company was ever appointed, and the control and management of the company's affairs generally *was* reposed in said Blackman; that the
7 complainant established an agency for the sale of its coal at Nashville, Tennessee, which was profitable to *to* the complainant and its agents, Bunch & Glasgow, a firm composed of said William H. Bunch and William T. Glasgow; that the operations of the complainant were at first limited almost entirely to the further development of its properties and the enlargement of the productive capacity of its mines, the shipment and sale of coal being then considered of an importance secondary to that of establishing the mines as a leading property of their class and building up facilities for an unlimited output; that to accomplish this purpose extensive entries were driven by working double shifts of miners, day and night, with the result of exposing large room areas, susceptible of being worked by an increased number of miners as soon as the fall and winter trade required larger shipments; but

that, notwithstanding the great attention and outlay that had been exacted in "dead work" by the development of the property, the complainant's operations yielded a steady profit, which was increasing from month to month; large quantities of coal were already being produced, for which ready sale was found in Nashville and other markets, and the sales from its said store amounted to a large annual sum.

Ninth. That in the latter part of June, 1878, the said Blackman was compelled by business to visit Paris, in France; that before leaving for that city he effected a loan of $2,500 from the firm of W. L. Radford & Co., of Memphis, Tennessee, to the complainant upon his and its promissory note, under a contract between the complainant and said W. L. Radford & Co.; that said note was to be paid in coal, to be delivered by the complainant to said firm in Memphis, and said Blackman deposited said sum to the credit
8 of complainant in bank, with directions that the said moneys should be used exclusively for the operations of the complainant to thus enable it to perform its said contract; that upon the said Blackman's departure and on the 19th day of June, 1878, he transfer-ed to said Glasgow one share of his own stock in said company to qualify him, and by written authority appointed him to supply *pro tempore* his place as president in his absence; that the said Blackman reposed in said Glasgow a high degree of confidence and trust, and had received from him a written assurance that he would faithfully fulfil all the complainant's contracts for the sale or delivery of coal, and that said Glasgow was familiar with the duties and functions which he would have been called upon to perform in such capacity of president of the complainant, but that the board of directors, at a meeting held July 1st, 1878, after Blackman's departure, disregardded his said appointment upon a technical objection and elected as president *pro tempore* said Helms, who thereupon assumed his said office, but that neither the said Helms nor any of the other then members of the said board had *any* either the practical ability or the experience requisite to discharge the duties of said office, and notwithstanding the said board had refused to recognize the said Glasgow as president of the complainant by virtue of said Blackman's said appointment they nevertheless appointed him the agent and manager of the complainant, and assigned to him as such all the duties and functions of the presidency, excepting the signing of contracts as president, so that the said Glasgow was thereby constituted and continued to be in fact the president of the complainant, except in name and official title, until the 25th day of September, 1878, and for the services theretofore and from the date of said Blackman's said appointment, rendered and thereafter to be rendered by the said Glasgow in his
9 said capacity, the said board at the same meeting voted him the salary of said Blackman as president during the latter's absence and from the day of his said appointment.

Tenth. That immediately after said Blackman's departure, as aforesaid, the said Criddle, the complainant's secretary and treasurer, in disregard of said instructions of the said Blackman and of

the interests of complainant and its obligations to perform its said contract with the said W. L. Radford & Co., took $2,463.55 of said $2,500 of the complainant's cash, and, as far as complainant is informed, applied the same to the payment of certain old debts of the said old firm of the Empire Coal Company, in nowise exacting or threatening, and thus deprived the complainant of the use of funds from which it reasonably anticipated making a net profit of several thousand dollars and likewise disabled it financially from performing its said contract with said W. L. Radford & Co., and that the said Criddle, further availing of the opportunity afforded by the absence of said Blackman, procured the directors, at their said meeting on July first, 1878, to increase his salary from one hundred to one hundred and fifty dollars per month at a time when the complainant was, as aforesaid, in pressing need of cash resources.

Eleventh. That about the first day of August, 1878, the plaintiff owed as total indebtedness for all accounts, except what was owing to said Blackman and said Criddle, $12,048.53. Of this sum $1,300.93 was owing to three parties having claims for purchase-moneys of the property and materials furnished in building for which they held liens against the said Croft tract, and $400.18 was due in small sums to various miners and for other accounts, all of which latter amount, except about $350, due to two parties, was eventually paid by either the complainant or the other creditors of the complainant next hereinafter mentioned, and that the balance of said sum, to wit, $6,740.42, was due to thirteen creditors of the complainant, the names of whom, with the amounts due them respectively, are set forth in Exhibit "I," hereto annexed.

Twelfth. That about the said 1st day of August, 1878, the properties and good will of the complainant exceeded one hundred thousand dollars in value; that the said Glasgow, whose firm was one of the largest of the company's creditors, had been in February, 1878, anxious to purchase a third interest in the said properties, then in a much cruder state of development, for $16,000, and would have paid that sum in cash for such one-third interest if he could have raised the moneys therefor, and the complainant had a prospect of doing a business during the fall and winter which would realize it a net profit exceeding at the rate of twenty-five thousand — per annum; that these facts were well known to said creditors, who each and every of them possessed the greatest confidence in the complainant's ability to pay their debts in due course from its business, and who continued without intermission for a long time thereafter to render work or loan money or sell upon credit goods to the company, as is plainly shown by the facts hereinafter set forth, and that there was no debt of the complainant that could not, with judicious management, have been paid in the course of its business, and that no creditor of the complainant except said W. L. Radford & Co. was pressing tho complainant for payment.

Thirteenth. That on said 1st day of August, 1878, the stock of the complainant was held by the parties and in the amounts herein set out in paragraph second of this complaint; that of the said Black-

man's stock 250 shares had been placed by him in the hands of said W. T. Glasgow to use as collateral security in procuring money to carry out the contract so made with W. L. Radf-rd & Co. with the complainant, and that, excepting the said lot of two hundred
11 and fifty shares and a few other pledged shares, the said Blackman had left, when he departed for Europe as aforesaid, all the certificates for his shares, signed by the proper officers and issued to and receipted for by him, with a blank assignment endorsed thereon and signed by him and witnessed, in the stock-certificate book of the complainant, in the custody of the said Criddle, who was then secretary and treasurer of complainant, as aforesaid.

Fourteenth. That about the said 1st of August, 1878, but exactly when is unknown to complainant, the said Helms and Criddle and sundry of their confederates, unknown to complainant, in pursuance and execution of a scheme then formed by them to deprive the said Blackman of his title to his said stock, made claim against the complainant for alleged debts of two hundred and fifty dollars and three hundred dollars respectively, which the complainant did not owe, and then approached the said thirteen creditors and proposed to them that they should in some way avail themselves of the liens upon the complainant's property for the payment of claims of laborers and miners; that such claims should be bought up by them and foreclosed, and that the complainant's property should be sold and bought by some one of said creditors for the benefit of all, and that the complainant should then be reorganized and its assets partitioned by distribution of its stock among them in the ratio of their several debts, and that, among other things, the said creditors should be assessed and should pay in cash ten per centum upon their respective claims against the complainant to provide the means to buy up such miners' claims and carry out said schemes, and that various of said creditors, but exactly which of them is now unknown to the complainant, acceded to such proposition and entered into such confederacy and arranged among themselves the plan
12 as aforesaid and further agreed, upon the consummation of their said scheme and the division among them of the complainant's stock, they would buy up the claims of all such as had liens upon the property and provide funds for the use of the complainant in its business.

Fifteenth. That about August 1st, 1878, as a part of such scheme and combination, the said Helms, who had theretofore and up to that time acted as the counsellor-at-law for the said Blackman and the complainant, procured the said Blackman to execute and mail to him a power of attorney, in the words and form proposed by said Helm-, on the thirteenth of August, 1878; that Exhibit "K," hereto annexed, is a correct copy of the minute book of the meetings of the complainant's directors and stockholders, and a true copy of said power of attorney from said Blackman to said Helms is set forth in said Exhibit "K," in the minutes of the meeting of September 17th, 1878, but that before receipt by said Helms of said power of attorney so mailed to him, it having been concluded by

the said Helms and his said confederates that some provisional action was necessary in order to assure the consummation of their said scheme, it was arranged that all the assets of the complainant should be transferred to the said Glasgow, in an instrument in form of and purporting to be a deed of trust for the benefit of creditors, with intent that claim of title should be made and the possession of the complainant's properties should be held under said instrument until said power of attorney should have been received by said Helms and said scheme should have been consummated, as aforesaid.

Sixteenth. That therefore and on the 9th day of August, 1878, the said Helms and Criddle and confederates procured a supposed meeting of the board of directors to be held without notice of
13 such supposed meeting having been given to said Blackman as a director, and a true copy of the pretended minutes of said alleged meeting is set forth in said Exhibit " K " under date of the said date, and that; it being necessary that the stockholders should consent to such pretended deed of trust, the said Criddle, without any power or authority whatsoever from the said Blackman, took from said Glasgow said 250 shares of said Blackman's stock, and, adding to it other shares of said Blackman's stock out of said stock-certificate book and certain shares of his own, the said Criddle's, stock, handed them back to the said Glasgow as alleged collateral security for the said debt of W. L. Radford & Co., and at the same time handed said Glasgow other two hundred and forty shares of said Blackman's stock out of said stock-certificate book as alleged collateral security for the debt due said Bunch & Glasgow from the complainant.

Seventeenth. That thereafter and in further pursuance of such scheme and on the said ninth day of August, 1878, the said Helms and Criddle procured a supposed meeting of certain persons alleged to be shareholders of the complainant to be held, the minutes of which sup-osed meeting are set forth in said Exhibit " K " under the said date; that no notice was ever given to said Blackman as a stockholder of such meeting before the same was held, and that the only votes cast at said meeting by shareholders of the complainant entitled to vote on their stock were those of Criddle, 315 shares; Helms, 1 share; Lewis, 1 share; Carroll, 1 share, and Glasgow, 1 share, making a total of 319 shares out of two thousand shares, and that of said 319 shares all, except those of said Criddle, had been given to the parties voting upon the same merely to qualify them for office in said complainant as aforesaid.

Eighteenth. That under and by virtue of the pretended resolutions set forth in said Exhibit " K " under said date of 9th
14 day of August, 1878, and without any other power or authority whatsoever in the premises, and in further pursuance of said scheme, a certain instrument set forth in Exhibit " L," hereto annexed, in form of and purporting to be a deed of trust from the complainant to said William T. Glasgow, was executed and delivered and recorded on the 12th day of August, 1878, in the office of the clerk of Christian county, in Deed Book No. 56, at page 244.

Nineteenth. That the said Exhibit "L" purported to convey all the assets, real, personal, and mixed, of said complainant to the said Glasgow, but that up to the 17th day of April, 1879 (and then only as hereinafter particularly set out), the said Glasgow never took possession as trustee or otherwise of or made claim to said properties or assets or any part or parcel thereof under or by virtue of said Exhibit "L" or otherwise, and never assumed nor entered upon the discharge of the duties or functions of trustee under said Exhibit "L," and never qualified as trustee under said Exhibit "L," and never entered into any bond or other security as such trustee, nor procured any such bond to be approved by the proper or any other justice of the State of Kentucky, or to be filed or recorded as required by the statute of Kentucky in such case made and provided, and that upon the same day upon which said instrument purports to have been executed and delivered the said Glasgow and all the then acting officers of the company and all the creditors embraced within the provisions of the same or their assigns, excepting some few whose several debts were small and were shortly thereafter paid off, abandoned, waived, or relinquished and avoided the said Exhibit "L" and all their privileges, rights, obligations, duties, and functions under the same severally and respectively, and that nothing was ever acted, done, suffered, or omitted by the said parties or either of them, directly or indirectly, to revive, restore, or in any other wise render the same valid, operative, or effective for any purpose whatever except as hereinafter particularly stated, and that, except as so hereinafter more particularly stated, no effect in fact or in law was given to the said instrument Exhibit "L" by any of the creditors or officers of the complainant or the said Glasgow therein named as trustee; that, notwithstanding said execution, delivery, and registration of the same, the business and operations of the complainant proceeded without any change or modification whatsoever by reason thereof; that the books of the complainant were continuously kept as the books of its own business, and no new accounts or books were opened by or in the name of said Glasgow as trustee, and the said Glasgow, as such manager and agent of the complainant, continued uninterruptedly to draw and receive his salary from the complainant and to charge the same upon its books, except that, in accordance with the wishes of said creditors (in conformity to which the terms of said instrument were in this behalf expressed), the one hundred and fifty dollars he had received monthly theretofore were reduced to one hundred and twenty-five dollars, and that the said Glasgow continued to exercise the functions of said agent and manager of the complainant solely.

Twentieth. That, notwithstanding the said instrument Exhibit "L," and without regard to the terms or legal effect of the same, the said creditors in Exhibit "L" with whom the said Glasgow participated proceeded to carry out their said plan for the division of the stock of the complainant among themselves; that immediately after the execution and registration of said Exhibit "L" an assessment of ten per cent. upon their debts was levied on and paid by

the first nine in said list of creditors, and that the moneys so
16 raised, to wit, $383.69, were applied to the payment and discharge of the smaller debts due the miners, and for payment of which said miners had liens upon the property under and by virtue of the statute of the State of Kentucky in such case made and provided.

Twenty-first. That pending the efforts of said creditors named in Exhibit "L" to consummate their said plans for the division of the stock of the complainant and in the latter part of August, 1878, the said power of attorney from said Blackman to said Helms so set forth in Exhibit "K," as aforesaid, was received by said Helms, and thereupon the plan first proposed by and between the said creditors was so modified and adopted that the following arrangement was agreed upon between the said creditors:

First. That such of said creditors as so chose might buy up such claims against the complainant as they could; that to the debts set forth in said Exhibit "I" as owing to said creditors respectively there might be added the assessment of ten per cent. so paid as aforesaid and the amount of all debts which might have been so purchased by the said creditors respectively, together with such amounts as said creditors respectively were willing to advance in cash or in sales of merchandise to the complainant; that said Criddle should be credited upon the books of the complainant with fifteen hundred dollars and the said Blackman with $945, although the complainant was then indebted to said Blackman in a much larger sum and to the said Criddle in a much smaller sum.

Second. That the said Blackman's shares and those of said Criddle should be surrendered to the company for such partition and distribution among the list of creditors so made up ratably to the respective sums so made up of their debts, advances, etc., as aforesaid.

17 Third. That in form the said creditors were to purchase said stock at the rate of 7½ cents per share (which, it being estimated that such debts and advances would aggregate about fifteen thousand dollars, was the exact price at which all the complainant's stock would be absorbed) and pay for said stock by release and discharge of their claims against the complainant.

Fourth. That such creditors as refused to enter into the arrangement or to sell their claims against the complainant should be paid in full (it being then contemplated that *that* the future profits of the complainant's business would be amply sufficient to provide means for the payment of such debts).

Fifth. To reorganize the administration of the complainant; select the most prominent in wealth and reputation out of said list of creditors to fill the offices of the complainant.

Sixth. To re-establish complainant's credit, which had been wilfully, badly damaged by the gross mismanagement and unfaithfulness of its officers in their efforts to carry out their said scheme, and to provide means, by the use of such re-established credit and the said creditors' individual credits and personal advances of money and sales of merchandise on time to the complainant as afore-

said, to enable complainant to carry on its future business successfully.

Seventh. But with a proviso that should the said Blackman, at any time before January 1st, 1879, pay all the debts and advances of said creditors, with interest, the stock so apportioned to and among said creditors as aforesaid should revert to him.

That such portion of said agreement so entered into between said creditors as was reduced to writing is set forth,
18 Exhibit "M," by those whose names appear subscribed thereto, to wit, on or about the 17th day of September, 1878, there was a meeting of the board of directors of the complainant, the minutes of which are set forth in Exhibit "K" under said date, and that thereafter an al-otment was made of said shares of the complainant to and among the parties and in the amounts respectively set forth in Exhibit "N," hereto annexed.

Twenty-second. That thereafter and on the 25th day of September, 1878, the said creditors met as the new stockholders of the complainant and elected new directors of the complainant, and thereafter and on the same day such newly elected directors held a meeting and elected a president and a secretary and treasurer, and that the minutes of said meetings of said stockholders and of said directors are correctly set forth in said Exhibit "K" under said date; that the persons and each of them named in said minutes accepted and undertook and entered upon the discharge of the duties and functions of the offices to which they were so elected respectively; that none of them has ever resigned or been substituted in any of the said offices, but that all of them thereafter continued to be and to remain such officers until on or about the 9th day of December, 1885, excepting the said Evans, who continued the president and a director of the complainant up to the day of his death, as hereinabove set forth, and that no election was ever held after said 25th day of September, 1878, by either the stockholders or directors of the complainant until on or about the 9th day of December, 1885, when a meeting of directors was held, at which said Blackman was elected a director and president of the complainant.

Twenty-third. That at the time of such elections, on said 25th day of September, 1878, and thereafter and during all the times hereinafter mentioned the said William H. Evans was a copartner of Thomas D. Fite and William Porter in the firm of Evans,
19 Fite & Porter, trading at Nashville in dry goods and notions, until the day of the death of said Evans, as aforesaid; the said James W. Manier, half brother of said Evans, was a copartner of James A. Pigue in the firm of Pigue, Manier & Company (composed of said Pigue and Manier only), trading at Nashville in boots and shoes; the said William T. Glasgow was a copartner of William H. Bunch in the firm of Bunch & Glasgow, trading at said Nashville in coal; the said R. F. Adams was a member of the firm of R. F. Adams & Company, trading at said Nashville in hardware and implements, and the said Samuel Cowan was a member of the

firm of Cowan & Co., trading at said Nashville in notions and white goods.

Twenty-fourth. That after their said election as directors and officers of complainant and during their entire administration of the complainant's affairs the said Evans and Manier persistently omitted, neglected, and refused to discharge or perform their several and respective duties and functions as such officers of the complainant and to give any attention whatsoever to its affairs or business, in utter disregard of the obligations and trusts imposed upon them by said acceptance of their said offices; that no effort was made by said officers or either of them to obtain any extension of time for the payment by complainant of its debts or any of them, nor to compromise or scale said debts or either of them, or otherwise compound the same, nor to raise money to pay said debts or furnish capital upon bonds of the complainant, secured by lien upon its properties or otherwise, or by any other common or usual financial measures or provisions well known to said officers, notwithstanding such measures and provisions as could easily have been carried out, and when carried out would have met all the requirements of complainant's condition, were suggested to said officers, and although the complainant's credit had not up to that time been seriously impaired, but, on the contrary thereof, the complainant could easily have and had in fact, during all said period, procured to be sold to it upon credit, for use in its said business, large quantities of merchandise and materials, and could have procured and did procure the loan of moneys upon its commercial paper from banks in Nashville, Tennessee, and elsewhere upon application for such loans by its proper officers; that the said Evans on or about the fourth day of November, 1878, required the treasurer to open the complainant's account in the Fourth National Bank of Nashville, of which said Evans was vice-president, and readily procured for the complainant a credit at said bank of six hundred dollars, of which credit, however, without any cause, he deprived the complainant within less than sixty days thereafter; that he made no other or further efforts to procure credit for or loans to the complainant, but, on the contrary thereof, by specious cautions and innuendos deprived the complainant of its credit among those with whom the complainant dealt, and thus reduced the resources upon which the complainant was dependent for the transaction of its business; that the said Evans and Manier refused to in anywise protect and promote the complainant's interests, but, on the contrary, studiously and systematically restricted the development of its business and suffered such business to decay when it was conclusively shown to them that the complainant was earning a net profit of fifty dollars per day during its working days, the said Evans and Manier alleging as a reason for their course that the said Blackman had until the 1st day of January, 1879, within which to redeem his stock which had been so partitioned among, and that if they improved the complainant's properties and extended its business during that period such improvement and extension would enure to the benefit of said Blackman solely and would not profit them

personally, and when remonstrated with for pursuing such a course of conduct the said Evans and Manier stated that it would be time enough after said Blackman had made default in so redeeming his said stock from them, and that after the first (1st) day of January, 1879, the complainant could get all the money it needed to operate its mines and develop their capacity and increase the output of coal and to enlarge the complainant's business, and when asked whence such moneys would be then provided refused to say, but repeated that there would be plenty of money when they knew the property was theirs, and shortly thereafter the said Evans, whenever applied to by any of the officers of the complainant or others touching its affairs, would refer them to said Manier and wholly refuse to perform the duties or exercize the functions of his offices of president and director of the complainant, notwithstanding he continued to fill such positions, and that, notwithstanding the large powers and authorities and the great obligations and responsibilities of the trusts reposed in him as the president of the complainant, he attended no meeting of the board of directors of the complainant after that held on the 25th day of September, 1878, at which he was so elected president of the complainant, as aforesaid, except one held on the 20th day of February, 1879, which seemed to have been convened for the purpose of preferring the payment of a debt due from the complainant to the said Evans out of the then scanty quick resources and assets of the complainant, which the said Evans had done so much to reduce and impair, as aforesaid, and that said Manier was equally unfaithful, derelict, and neglectful in his attention to the affairs of the complainant during said period succeeding his election as a director of the complainant, and that almost the entire, if not the entire, attention given by said Manier to the complainant's affairs during said period, excepting such conduct as would promote the selfish and personal objects of said Manier and his confederates, is shown in the said minutes, Exhibit "K," and that the others of said complainant's said directors and officers were wholly subservient to the wishes and purposes of the said Manier and Evans.

Twenty-fifth. That certain of the books and papers of the complainant, containing the accounts of the complainant and other information material to the prosecution of this suit, have been lost or destroyed, and the complainant has at present no means of informing itself of the exact contents of such books and papers, but that from such of the books and papers of the complainant as are now in the possession or control of the complainant it appears that during the period from September 25th, 1878, to April 5th, 1879, notwithstanding the complainant's business was so grossly mismanaged by such newly elected officers as aforesaid, the complainant sold coal of the price of $7,612.56 and merchandise (at its said store) of the price of $7,754.70, being an aggregate of $15,367.27; that during the same period the complainant's expenses for all accounts (including $6,343.48 paid for such merchandise) were $11,296.71, showing a net profit during the said period of $4,070.56, and that from September 30th, 1878, to January 1st, 1879, the complainant had paid and laid

out the following sums for the accounts named respectively (which were charged upon its said books in its accounts for such expenses as aforesaid): "Incidental mining, $1,923.73;" "entry driving, $2,452.67;" "development, $288.03" (all of which was added to the actual value of the complainant's said properties and increased such value by many times such amounts and likewise increased the productiveness of its mines), and also for capital stock bought
23 in by the complainant, $1,005, which reduced complainant's liabilities to its general creditors by that sum (and its liabilities for its capital stock $13,400); that the aggregate of said last-mentioned sums is $3,462.43, which, when added to the said net profits of $4,070.56, makes the sum of $7,532.99 which the complainant had earned in its said business during the said period, and that no expenditures were made by the complainant after said January 1st, 1879, for either "incidental mining," "driving entries," or "development."

Twenty-sixth. That on the 10th day of August, 1878, the complainant had on hand a stock of goods in its said store of the value of not exceeding $300, and on the 22nd day of March, 1879, a stock the cost price of which was upwards of $875; that on the 20th day of May, 1879, the complainant owed (including all royalties then due under said Exhibit "C" and exclusive of liabilities upon its capital stock) $5,292.49, all which had been incurred since September 25th, 1878, and of which sum $3,837.65 was owing to and among sundry of the complainant's stockholders, leaving $1,454.84 due mostly to employés of the complainant and which would have been paid almost entirely in ordinary course with goods out of the complainant's said store, sold to such employés at a large profit to the complainant, as aforesaid, and that on said last-mentioned day there was due and owing to complainant from various parties upon good accounts $1,284.21, and that the properties of the complainant were on said last-mentioned day more valuable and its assets larger by many thousands of dollars than they were on said 10th day of August, 1878; that all the complainant's creditors and all others who knew its affairs had full confidence in the ability of the
24 complainant to meet all its accrued and accruing obligations and to realize large profits to itself and its stockholders out of its net earnings in the regular course of its business if properly conducted and managed.

Twenty-seventh. That shortly prior to the 1st day of January, 1879, the complainant was indebted to Brownell & Co. and —— in the respective amounts of $741 and $135 for work, labor, and services performed and materials furnished in and about the erection of the said store building and the said six cottages upon the said Croft tract, for which claims the said creditors held mechanics' liens upon the said tract, and at the same time the complainant was likewise indebted to Mary A. Croft and George Croft upon a promissory note for $400 given for a portion of the purchase price of said Croft tract, for which the said Crofts likewise held a lien upon said tract; that there was about that time due and owing interest upon the said note not exceeding $15, and the said Crofts offered and proposed to

the complainant that if said mechanics' liens upon said tract were satisfied and discharged and the interest on their said note were paid that they, the said Crofts, would extend the time for the payment of their said note for an indefinite time and not press the complainant for the same, and that the said offer and proposition of the said Crofts was refused and rejected by the said officers of the complainant, and thereupon and prior to said 1st day of January, 1879, the said mechanics' lienors instituted suit to foreclose their said liens and the said Crofts likewise thereupon instituted suit to foreclose their said lien and said three suits had so far progressed that bills had been filed and this complainant had suffered default in said suits and the said bills in said suits had been taken for confessed prior
25 to the said 1st day of January, 1879, and the said lienors had become entitled to the entry at the March term, 1879, of their final decree for foreclosure and sale of the Croft tract.

Twenty-eighth. That on or about the 18th day of February, 1879, the said Evans, as such president of the complainant, without any authorization or direction whatsoever from either the stockholders or directors of the complainant, caused the mining operations of the complainant to be discontinued, notwithstanding the mining operations were (outside of the complainant's store business) almost the only resource from which complainant was at that time realizing ready moneys and the same had been up to that time conducted with profit to the complainant, and thereafter the said mining operations were never resumed for the benefit or account of the complainant.

Twenty-ninth. That on March 19th, 1879, the said Evans and Manier procured to be held a meeting of stockholders, the minutes of which meeting are set forth under said date in said Exhibit "K," and further procured the committee therein named (of whom said Manier was one) to be appointed for the pretended purpose of conferring with parties in regard to the sale of complainant's mines; that no meeting or conference between the members of said committee was ever held, no negotiations or proposition for a sale of the said mines were ever made or entered into with any party or parties whatsoever, and that no attempt to sell the said mines was ever made by the said committee or either of them.

Thirtieth. And that immediately after said meeting of March 19th, 1879, the said Evans, as president of the complainant, but without any authorization or direction from either the stockholders or directors of the complainant, ordered and caused
26 the goods of the complainant then in its said store at said Empire and which were new and had been recently invoiced to complainant at $875, cost price, to be sent without the State of Kentucky to his said firm of Evans, Fite & Porter at said Nashville, Tennessee; that before the arrival of said goods at the store of Evans' firm the said goods were levied upon by the sheriff under attachments issued at the suit of three certain parties claiming to be creditors of the complainant and residing at said Nashville, as complainant is informed and believes, because of the non-residence of the complainant in the State of Tennessee, and, notwithstanding

said Evans professed to take charge of such goods and promised to protect the same, he allowed the same to be sold under said attachments for the gross sum of $272 at sheriff's sale at public auction.

Thirty-first. That at the March term, 1879, of the circuit court of Christian county, Kentucky, the said Crofts and the said other lienors obtained final decrees for foreclosures and sales of the said Croft tract and an order for such sale of said tract on the 7th day of April, 1879, and thereupon proceeded in course to advertise the said tract for sale accordingly; that thereafter the said Manier and Fite, with attempted secrecy, visited the mines and properties of the complainant at said Empire and made a thorough inspection of the same, and thereupon stated to said Glasgow (who, becoming aware of their visit, had followed them to said Empire on the following day) that they were satisfied that the said properties of the complainant were very valuable if a few men could own them and run the business, and proposed to the said Glasgow that the said Croft tract should be permitted to be sold under said decree of
27 foreclosure and sale, and that the said Manier should be allowed to buy in the said tract, and the said Manier then promised that if he were allowed to so buy in the said tract as proposed he would divide the same up in equal seventh parts between himself, said Evans, Fite, Porter, Pigue, and Glasgow and William H. Bunch, the partner of said Glasgow.

Thirty-second. That on March 1st, 1879, the complainant had in its store merchandise of the value of about $1,262.25 and cash on hand to the amount of upward of $200 and proceeds of coal in the hands of its agent in Nashville to the amount of $291.28, besides a lot of personalty consisting of mining cars and tools, mules, harness, wagons, carts, and in general a full equipment and outfit for its business of mining, together with other personalty of great value which would have been readily reduced to money, embracing the rails and other iron upon its railway track, which alone would have realized more than enough to pay off the said judgment of said lienors in full, and that the complainant also was possessed of its said leasehold, the Brasher tract of about 200 acres and the improvements aforesaid thereon, and the complainant's assets were and had been for some time prior continuously increasing in amount and value and with moderate diligence the officers of the complainant could have then readily borrowed sufficient moneys upon the complainant's credit to have satisfied all claims that were then pressing the complainant, and, failing to effect such loans, could have provided all the money requisite for such purpose by the sale of a relatively small portion of such personalty.

Thirty-third. That notwithstanding the said comparatively good financial condition of the complainant and its said large ready resources, next above stated, the said Manier and others
28 procured a meeting of stockholders of the complainant to be held on the fifth day of April, 1879, the pretended minutes of which meeting, as by reference to said Exhibit "K" will more fully appear, contain a pretended resolution which is stated to have been unanimously adopted at such meeting declaring the complain-

ant unable to protect itself against the said threatened sale of the said Croft tract, thus characterizing of record the gross inefficiency and misconduct of the officers of the complainant in the administration of the complainant's affairs, but that, in fact, such resolution was never passed at such meeting and the said pretended minutes thereof were some time after the date of such meeting invented and procured to be spread upon the record book of the complainant by said Manier, who intended thereby to aid the fraud practised by him in connection with the sale of the Croft tract on the seventh day of April, 1879, and to give pretext and color to his purchase of said tract as hereinafter set forth.

Thirty-fourth. That shortly prior to the said 7th day of April, 1879, the said Manier purchased for about $75 the judgment upon said claim for $135 in said suit upon such mechanic's lien, and also attempted to purchase the judgment upon said claim for $741 in said suit upon said other mechanic's lien, but ascertained that said last-mentioned judgment had been already purchased by one William H. Howe at a heavy discount, and thereupon said Manier entered into an agreement with the said Howe whereby the said Manier promised to pay the said Howe the face value of said judgment if the said Howe would refrain from bidding upon said Croft tract and allow the said Manier to purchase the same at a smaller price and with less competition upon the sale thereof under the said judgments.

Thirty-fifth. That thereafter and on the morning of the 7th day of April, 1879, the day appointed for the sale of said Croft tract, as aforesaid, and before such sale had actually taken place, the said Manier procured from the owner of the land adjacent to said Croft tract an option or privilege to purchase from said owner at any time within a period unknown to plaintiff, but extending beyond the 2nd day of June, 1879, two acres of said adjacent land at fifty dollars per acre, a price far greater than the actual value of such land; that such option was purchased by said Manier with the expressed intention of cutting off and depriving the complainant of all rail communication with the said St. Louis & Southeastern railway at said station of Empire, and thereby diminishing the value of its mines and enabling him, the said Manier, to purchase said mines eventually at much less than their actual value, and that in defining the boundaries of and laying out the said land the said Manier made evident the purpose he had so expressed, as will more fully and at large appear by reference to the diagram and the explanatory notes at the foot thereof, hereto annexed, marked Exhibit "O," and the topography of the lands about said Empire station, as next hereinafter described.

Thirty-sixth. That the complainant's said railway had been laid out over the only course by which complainant could obtain suitable approaches to and connection with the said St. Louis & Southeastern railway, upon which it was dependent for markets for its coal; that north of said Croft tract the St. Louis & Southeastern railway was thirty feet below the surface and fell rapidly away down a steep grade through a deep valley; that immediately

south of the railway station and switch was a high trestle-work of about a half mile in length, spanning another deep valley, which stretched about east and west, with high, precipitous sides, so as to encircle the said Croft and Brasher tracts, and that south of the complainant's railway and between it and said last-mentioned valley and immediately west of the railway station the ground rose rapidly to a considerable elevation as it approached said railway station; that the conformation of the said adjacent land was such that the complainant could acquire no other connection with said St. Louis & Southeastern railway, except at an expense, both in construction and operation, which would have rendered such connection wholly impracticable and the complainant's business unprofitable.

Thirty-seventh. That the said Croft tract was advertised to be sold on said 7th day of April, 1879, as one entire tract of land, together with all the buildings and improvements thereon, notwithstanding the said six cottages and the said storehouse each stood on a separate and distinct lot on said tract, abutting upon said main street as aforesaid, and the said lots, with the said houses thereon, could and should have been sold separately as several parcels of land, as will more clearly appear by reference to said diagram, Exhibit "O," and that said Croft tract, together with all said buildings and improvements thereon, was accordingly, without protest or objection whatsoever on the part of the complainant's officers or either of them, put up in one entire lot at public auction for sale under said judgment and was struck off to said Manier and subsequently conveyed
31 to him for the sum of $1,900, part of which said sum was paid in said judgment upon said claim of $135, which he had so purchased, as aforesaid, at its face value; that said sale was advertised solely by notices posted only in Hopkinsville, Kentucky, and that no effort on the part of the complainant's officers or either of them was made to advertise it elsewhere; that the said sale was poorly attended; that there were few bidders thereat, excepting the said Manier; that said Howe, in performance of his agreement with said Manier, refrained from bidding thereat, except to the amount of his judgment, the face value of which was subsequently paid to him by said Manier, and that the actual value of the property so transferred to said Manier was upwards of $12,500.

Thirty-eighth. That immediately after said sale the said Manier openly boasted that by the acquisition of the said Croft tract and the option that he had so obtained as aforesaid upon the said two acres adjacent to said Croft tract he had the "key to the situation," and that he could thereby compel a sale by the complainant to him of its remaining properties upon his own terms, and thereupon and on the next day, to wit, April 8th, 1879, the said Manier and his said confederates procured a meeting of the directors of the complainant to be held, the minutes of which meeting, as set forth in said Exhibit "K," declare that such meeting was called for the purpose of making some disposition of the mines, the right of way from the mines to the said Southeastern railway having so as aforesaid been sold by the sheriff at said sale on April 7th, 1879, and that a committee was appointed, consisting of said Evans and Glas-

gow, to receive bids for a sale or lease of the property, subject to acceptance or rejection at a meeting of stockholders to be called
32 for April 10th, 1879, and that thereupon said meeting adjourned to April 10th, 1879; that no effort was made by said committee or either of them to make any disposition of said mines or to procure or receive any bids for a sale or lease of the complainant's property or any part thereof; that no meeting of the stockholders or directors of the complainant was ever convened or held on said April 10th, 1879, as proposed in said resolution, or at any other time, but that the said Manier, in anticipation of such meeting of stockholders and immediately after said meeting of April 8th, 1879, drew up and exhibited to said Glasgow a proposition or offer to purchase for about $4,000 the balance of the complainant's properties, which were in fact then worth upwards of $85,000.

Thirty-ninth. That the certain leaseholds and mining privileges, Exhibits "D," "E," "F," "G," and "H," were wholly wilfully abandoned by the said Manier and his confederates, who had theretofore refused and neglected to work the same or otherwise obtain for the complainant the great benefits and profits which should have been realized for its use from its rights and privileges therein, and thereby allowed large claims for royalties under the terms of said exhibits to accumulate against the complainant and all rights of the complainant under said exhibits to be jeoparded and imperilled by suits for forfeiture; that a certain portion, to wit, Exhibit "D," of the said leaseholds and privileges lay adjacent to the said Brasher tract, and is of especial and great value for mining operations in connection with said Brasher tract, and that the title in fee simple to the lands described in said Exhibit "D" has since been acquired by the said Empire Coal & Mining Company through the
33 agency of the said Manier and his said confederates, in utter disregard of the complainant's said rights therein and by means of such wilful abandonment of the same by them.

Fortieth. That thereafter and some time prior to the 17th day of April, 1879, the said William T. Glasgow, at the instigation of the said Manier and Evans and their said confederates, claimed and asserted title to the said remaining properties of the complainant under said instrument in form of a deed of trust as aforesaid, being said Exhibit "L," which had been so as aforesaid abandoned and of the existence of which the said Evans was up to that time ignorant, and under and by virtue of said pretended title proposed to sell the said properties at public auction.

Forty-first. That thereafter and on or about the said 17th day of April, 1879, and in pursuance and execution of such purpose, the said Glasgow procured Thomas H. Williams and Edward Williams to join him in the execution of a bond for the faithful performance of his duties as supposed trustee under said instrument, Exhibit "L," and caused the said bond to be recorded on the said 17th day of April, 1879, in the office of the clerk of the county court of Christian county, Kentucky; that said Thomas H. Williams and Edward Williams were the father-in-law and brother-in-law respectively of

the said Glasgow and non-residents of the State of Kentucky, and as such they were not nor was either of them a duly qualified bondsman.

Forty-second. That thereafter and in further pursuance and execution of his said purpose the said Glasgow placed himself under the advice and counsel of a certain firm of attorneys in Kentucky, who were then and thereafter the personal advisers and counselors of and wholly subservient to the wishes of the said Manier
34 and Evans, and thereafter the said Glasgow submitted his conduct in the premises to the direction and control of the said attorneys; that the said attorneys at first instructed the said Glasgow that he could sell the complainant's said properties as trustee under said Exhibit "L," but that it would be necessary, in order for said Glasgow to pass a perfect title to said properties under such sale, that the consent of the complainant's stockholders to such sale should first be obtained; that the said Glasgow thereupon referred the said instructions of said attorneys to the said Manier and his said confederates, who positively refused to allow said Glasgow to take any steps whatever to obtain any such consent of stockholders to such sale, and that thereupon the said attorneys, upon being informed of such disapproval of their said instructions by the said Manier and his said confederates, further instructed the said Glasgow that he should proceed to make such proposed sale of the complainant's said properties without the consent of such stockholders, but that it should be so arranged that said properties would realize at such sale at least $10,080 to satisfy the creditors named in the schedule which was filed with the said Exhibit "L" and whose claims aggregated that amount for fear that such creditors, unless so satisfied, might afterwards come in and impeach the validity of such sale.

Forty-third. That thereafter the said Glasgow, in further pursuance and execution of his said purpose, proceeded to and did advertise a sale of all the said remaining properties of the complainant under the said Exhibit "L" for the 2nd day of June, 1879.

Forty-fourth. That thereafter and before the day of such proposed sale the said Glasgow procured his partner, William H. Bunch,
35 to provide $10,080 for the purpose of bidding said sum at such sale and of making such bid good, and the said Glasgow so informed the said Fite (who was then acting in the premises for the said Manier during the said Manier's absence in Boston), and the said Fite thereupon, on his way to the sale and on the morning of the day on which such sale was to take place, had a private interview with the said firm of attorneys in Kentucky, and after such interview stated to the said Bunch substantially that by purchasing the said properties at such sale the said Bunch would incur a liability of $40,000 under the said lease and in all probability thereby break himself, whereupon the said Bunch, in turn, consulted the said firm of attorneys, who substantially confirmed the statements of the said Fite, and thereby so alarmed the said Bunch that he refused to venture the moneys he had so provided

for the purpose of bidding at such sale or to make any bid whatever at such sale.

Forty-fifth. The said Glasgow, upon being informed of the withdrawal of said Bunch as a bidder, refused to make the sale, whereupon said Fite and said attorneys stated to said Glasgow that unless such sale should proceed the said Glasgow would make himself personally liable for all damages that might accrue to the mines, which were then threatened with serious injury from various causes, during the cessation of operations therein, and thereby so intimidated the said Glasgow that such sale was proceeded with and the said properties were knocked down by the auctioneer employed by the said Glasgow for $1,400 to said Manier on a bid for his use made by said Fite, who was the only person except said Bunch who had attended said sale for the purpose of bidding thereat, and that thereafter the said Glasgow, as such supposed trustee under
36 said Exhibit "L," executed and delivered to said Manier a deed of the properties so sold, which embarced all the properties, real, personal, and mixed, of the complainant, excepting said Croft tract, and also the complainant's mining tools, implements, iron rails, spikes, tramway, and blacksmith tools, merchandise, and all and every description of personal property which the complainant then owned, and that such sale was not made in good faith for the purpose of performing or complying with any of the terms, covenants, or conditions of the said Exhibit "L," but, on the contrary thereof, for the sole purpose of enabling said Manier and his said confederates to acquire a colorable title to the same for their own personal uses and benefit, and that said sale was made without the request in writing or otherwise of any creditors of the complainant for the purpose of carrying out the provisions of said Exhibit "L" in good faith towards the complainant or its creditors.

Forty-sixth. That very shortly after such sale the said Manier and his said confederates, trading under the name and style of J. W. Manier, resumed the operations of mining and trading in general merchandise, theretofore carried on by the complainant, upon the complainant's said properties at said Empire.

Forty-seventh. That on or about March, 1879, the said Manier and his said confederates had entered into a conspiracy with one Benjamin Robinson (who was one of the lessors and then the agent of the other lessors of the complainant in said Exhibit "C" in respect of the said lease) and the attorneys of the said Robinson (who were the same firm of attorneys hereinabove mentioned as the personal attorneys of said Manier and his said confederates) to
37 forfeit the title of the complainant to the said Brasher tract under the said lease and to obtain for said Manier and his said confederates the title in fee simple to the said Brasher tract, and thereafter, in pursuance and execution of such conspiracy, an action was brought in the name of said lessors against the complainant upon a claim for royalties overdue under said lease and for default in payment of which a forfeiture of said lease was demanded in said action, and that said action was allowed to proceed to judgment of forfeiture of said lease against the complainant by

default, notwithstanding no forfeiture had then occurred, as was and is apparent from the terms and conditions of said lease, upon which no suit for forfeiture could have been instituted before the 5th day of July, 1879, at the earliest, and upon the facts no such suit could have been instituted prior to December, 1879, and that a true copy of the bill of complaint and decree in said action is hereto annexed, marked Exhibit "P."

Forty-eighth. That thereafter and on or about the 11th day of June, 1879, and before the determination of said last-mentioned action and in further pursuance and execution of said conspiracy the said Robinson and his said attorneys procured to be executed and delivered by the complainant's said lessors in said Exhibit "C" to the said Manier a deed of the said premises named in said Exhibit "C" in fee simple for a consideration of $8,000.

Forty-ninth. That thereafter and on or about the — day of ——, 1879, the said Manier procured to be incorporated the de-
38 fendant The Empire Coal and Mining Company for the purposes of mining, etc., with its principal office located at Nashville, Tennessee, under and by virtue of an act of the legislature of the State of Kentucky passed on the — day of ——, 188–, and entitled An act, etc., being chapter — of the laws of —— and the acts amendatory thereof and supplementary thereto; that the defendants James W. Manier, James A. Pigue, Thomas D. Fite, and William Porter were incorporators of the said company and are and have been ever since the said organization thereof directors therein; that William H. Evans was also an incorporator of said company and a director thereof from the date of its organization until the — day of ——, 1884, on which day the said William H. Evans died at the city of Nashville, Tennessee, leaving a last will and testament, whereby he appointed the defendants Horton Fall and James D. Richardson the executors of his said will; that the said will was duly proved on or about the — day of ——, 18—, before ——, and recorded in the office of the county judge of the county of Davidson, State of Tennessee, and recorded in the office of the clerk of said county on or about the — day of ——, 18—, and thereafter the said county judge duly issued to said Fall and Richardson letters testamentary upon the estate of said Evans, deceased, under said last will.

Fifty. That, upon the organization of said company, the said Manier conveyed to it all properties, real, personal, and mixed, which he had so, as aforesaid, acquired from the complainant, and that the said company thereupon and thereafter continued the business of mining and merchandising formerly carried on by the plaintiff upon its said properties at said Empire, as aforesaid;
39 that the capital stock of said company, amounting to $100,000, was distributed in equal portions among and issued to the said five corporators, and that, as complainant is informed and believes, the same parties now own and hold and have continuously since said organization of said company owned and held all of its capital stock, except that the said executors of Evans, upon his

death as aforesaid, succeeded to the shares of said stock originally allotted to said Evans.

Fifty-second. That the said Empire Coal and Mining Company and its said officers, realizing the many imperfections in the title of said company to the complainant's said mines and properties and being continuously apprehensive that the complainant and its creditors would take legal steps to recover the same, have operated the said mines and properties and merchandise business with the sole purpose of realizing therefrom the greatest amount of money in the quickest possible time and without any intention, desire, care, or provision to in anywise protect, preserve, or improve said mines or properties; and, so operating the said mines, properties, and business, the said company and its said officers have caused and suffered great damage, injury, and waste to the same; that, among other things, by unskilful and reckless mining and engineering, the said company had caused and suffered the roof to cave and fall into various of the rooms in said mine upon the said Brasher tract and thereby subjected the said mines to flooding from surface water (which, besides working great injury to said mine, has to be pumped out of said mine at great expense) and rendered useless the main entry to said mine, which was driven at great cost to the complainant, and made it necessary to drive a wholly new entry at another point and otherwise greatly injured the said mine and depreciated the same; that certain new entries have been driven by said company in such unskilful, reckless, careless, and negligent manner as to further greatly injure said mines and to require a large outlay in order to place the said mines in the condition in which they were when the complainant was so deprived of the possession of the same as aforesaid, and that said company and its said officers have likewise wasted and destroyed and otherwise greatly injured and damaged the improvements and the personal property of complainants hereinbefore mentioned as being upon said realty, and are still causing and suffering great waste, damage, and injury to the same, and that by reason of the premises the complainant has been damaged in the sum of one hundred thousand dollars.

Fifty-two. That the said company and its said officers, continuing to run and operate said mines, properties, and merchandise business of complainant, as aforesaid, from the date when the complainant was so deprived of the possession of the same, as hereinbefore mentioned, to the present time, have realized large profits therefrom, to wit, $20,000 per annum, and, notwithstanding such large profits realized by said company and its said officers, a much larger profit could have been realized from said mining and merchandise business if the same had been conducted in a proper and businesslike manner, and complainant avers that the defendant could and should have realized at least $— per annum, and could and would have preserved and improved said mines and have protected them from the waste and other injury so caused and suffered by said company and by its said officers as aforesaid.

Fifty-third. That after the pretended sales of complainant's prop-

erties, as aforesaid, and the conversion of its properties by said defendant company, there still remained due and unpaid a number of debts to various parties, whose names are too numerous to
41 mention, and among the number of said creditors one W. L. Radford, of Memphis, Tennessee, held a claim against complainant for the sum of $2,500 and accrued interest thereon from the — day of ——, 1878; one W. M. Lewis, a citizen of the State of Kentucky, was holder and owner, by assignment or endorsement, of said claim; that after the pretended purchase of complainant's said properties by the said Manier and his confederates, and after the organization of the defendant The Empire Coal and Mining Company, and after the transfer of complainant's property by the said Manier to the defendant company, and long after the commencement of operations in complainant's mines and merchandise business by the said defendant company, the said Lewis, as holder and owner of said Radford claim of $2,500 and interest, filed a bill in the chancery court of Davidson county, Tennessee, against the said Manier and his confederates and the said defendant company, and, among other things, alleged in said bill that the parties, defendants to his bill, were in possession of said properties of this complainant and were claiming under the said pretended title thereto, but that, in fact, they were not the owners of said properties and that said properties still belonged to this complainant, and sought by said bill to have said properties subjected to the payment of his said claim owing him by this complainant; that said suit was instituted by the said Lewis without the knowledge of this complainant, which fact was well known to the said defendants to said Lewis' suit; that said defendants did not allow said cause to come to a hearing, but paid the said Lewis a large sum of money to withdraw his said bill and thereby prevent a judicial determination of said complainant's rights to said properties; that the only possible ground of recovery in said bill would have been to prove that complainant was and defendants were not the legal owners of said properties, and to avoid this issue
42 was the sole reason for defendants' action in compromising said suit; that similar suits were instituted by other of the creditors of complainant above mentioned and referred to and alleging in substance the same grounds for recovery as was stated hereinbefore to have been alleged in said Lewis' suit; that in each and every of said causes the said defendants either compromised them by paying a portion of the claims alleged to be due from this complainant or paid them in full before any one of them were ever judicially determined, settling the rights of the parties thereunder, and thus the said defendants, realizing the utter worthlessness of their said titles to complainant's properties, have, at great expense and trouble to themselves, attempted to avoid a contest which could but declare them the unlawful holders of the complainant's said properties until such time as the statute of limitations should perfect and give them title thereto, and that in furtherance of this intention the papers in all of the causes next hereinbefore mentioned have been removed from the offices of the proper official custodians thereof and cannot be found either there or elsewhere by complain-

ant or its attorneys, who have made diligent search for them in order that the allegations contained therein might be referred to with greater particularity and certainty.

Fifty-fourth. And the complainant, not having a corporate seal, hereto annexes the signature of its president. The premises considered, complainant prays that the parties named as defendants be made such and be required to answer this complaint, but not under oath, which is hereby expressly waived; decree that said trust deed is void and has been void from its execution, and all and
43 singular the acts done thereunder are void and of no force or effect against complainant, and, if for any reason this cannot be done, decree that no trustee was ever properly appointed and qualified, and that all acts attempted to be done thereunder are void, and that all sales and conveyances made thereunder were not legal or binding against this complainant. If for any reason this cannot be done, decree that the creditors under said trust deed relinquished or waived all their rights thereunder or that they never in fact accepted the benefits or provisions of said trust deed, and decree that the same be delivered up and cancelled; decree that said defendant Manier was a director of complainant for all times stated and as such was acting as its agent and trustee; that the said Manier purchased said Croft tract of land, containing 23¼ acres, at said judicial sale for the use and benefit of complainant, and that the same is now held in trust for complainant by said Empire Coal and Mining Company; decree that the complainant's interests in said Brasher tract of land under said pretended sale under said trust deed and the fee-simple estate in said tract were purchased by the said Manier in trust for the use and benefit of complainant, and that the said tract is now held in trust for complainant by the Empire Coal and Mining Company; decree that the said purchase of all other parts of the property above referred to in which complainant owned an interest and which have been purchased by and for the use of said Empire Coal and Mining Company are held in trust by said defendants for the use and benefit of complainant; divest titles to said properties out of the defendants, vesting them in complainant; decree that all acts done by said defendant Manier and his confederates in the premises to have been a fraud upon complainant,
44 and that they were acting in a fiduciary capacity and relation to complainant, and decree that all benefits accruing to said defendants from their said acts properly belong to complainant, and that said defendants are accountable to complainant therefor; decree that said defendants have been using and operating said mines and merchandise business in trust for the use and benefit of complainant, and give complainant a decree against said defendants for the amount of all profits arising to them from such uses and operations, and for such further sums as could have been realized from such business and mines by proper management and diligence, together with interest and costs; give complainant a decree against said defendants for all damage, waste, and other losses sustained by complainant and suffered and done by said de-

fendants in the careless and negligent use and operation of said business and mines, together with interest and costs.

Appoint a receiver, *pendente lite*, to take charge of said business and mines, to prevent further waste and damage and losses to complainant by reason of the careless and negligent manner of defendants in continuing to use and operate said business and mines as aforesaid; grant to complainant an injunction against said defendants restraining them from using and operating said business and mines until such receiver can be appointed as aforesaid; grant such other and further relief as complainant may be entitled to under the law and facts of the case.

EMPIRE COAL & TRANSPORTATION COMPANY,
By A. J. BLACKMAN, *President.*

HILL & GRANBURY,
W. J. HARDY,
Solicitors & Attorneys.

THE STATE OF NEW YORK, }
City & County of New York, } *ss:*

Personally appeared before me the undersigned, A. L. Blackman, who makes oath that in due form of law *that* the matters and
45 things stated in the foregoing complaint as of his own knowledge are true, and those stated upon information he believes to be true.

A. L. BLACKMAN.

Sworn to and su-scribed before me this third day of April, 1886.
JOHN H. NEWMAN,
Notary Public, New York County. [NOTARIAL SEAL.]

EXHIBITS.

EXHIBIT "C."

This indenture, made and entered into, between Mary Ann Brasher, widow of A. H. Brasher, deceased, Benjamin Robinson and A. J. Robinson, his wife, Joseph Cordier and Serena Cordier, his wife and Albert Brasher and P. D. Brasher, his wife, heirs-at-law of A. H. Brasher, deceased, parties of the first part and A. L. Blackman of Nashville, Tennessee, party of the second part, witnesseth: That the parties of the first part have leased and do hereby grant, lease and convey unto the party of the second part the exclusive mining privilege and the right to mine, use and ship the coal from off and under all that tract of land lying in Christian county, State of Kentucky and described as follows: It is bounded on the south by the lands of W. G. Croft, on the west by the lands of John Davis and D. M. Wooldridge, on the east by the land of Albert H. Brasher and on the north by the land of L. G. Croft and which tract of land is

said to contain two hundred acres more or less, this tract of land, descended to the parties of the first part, as the widow and heirs-at-law of A. H. Brasher, deceased, late of Christian county State of Kentucky and said tract of land is not encumbered by lien or mortgage, to have and to hold the exclusive mining privilege, with the right to mine, use, sell and ship coal from off and under said tract of land, subject to the conditions and limitations herein im-
46 posed and for the consideration here*here*inafter named, to him the party of the first part, his heirs and assigns, for and during a term of fifty years from and after the twenty-second day of May, A. D. 1877; and the considerations and conditions of this lease are as follows, to wit:

First. The parties of the first part lease, grant convey, for a term of fifty years from the twenty-second of May, 1877, unto the party of the second part, the exclusive mining privilege and the right to mine, use and sell and ship coal from off and under said land for the consideration of ten cents per ton royalty for each and every ton of lump coal mined, used, sold, and shipped from said land during this lease and the same shall be paid in monthly installments and the books of the party of the second part shall be open for inspection and examination once each month for the purposes of settlement with the parties of the first part, agents or attorneys; but no royalty shall be paid for any slack coal mined, or shipped, used or sold from said mine, or tract of land and the royalty of ten cents per ton is for lump or block coal only.

Second. It is agreed that the party of the second part shall have exclusive right of way through and over said land for tramways, railways, wagon roads to and from the mines to the St. Louis & Southeastern railway and such other ways as may be necessary in the working of said mining operations for free egress and ingress; provided that said way or ways shall not exceed twenty-five feet (each) in width.

Third. The said party of the second part, heirs and assigns is to have the use of water or springs that may be found on the land, so far as necessary for mining, or for hands, teams etc., free of charge.

47 Fourth. The party of the second part shall have the use of timber from the woodland on said tract of land for mining purposes, tramways, cross-ties, trestles and such other purposes as may be required in mining coal, but not to include timber for houses, and the party of the second part *us* to have the right and privilege to erect on said land such houses or buildings as may be necessary for tenement-houses, storehouses, or necessary buildings, for the conducting and operating said mines during said term, the same to be used free of charge; the whole privilege conveyed to be used so as to prevent as little injury as possible to said lands.

Fifth. The said party of the second part is to commence mining operations in good faith as contemplated by this indenture, within eight months from the date hereof and a failure to do so shall render this lease and all the covenants null and void.

Sixth. The mining operations shall be prosecuted in good faith

after the mines are opened and after the mines have been opened for one year there shall not be less than an average of 200,000 bushels of coal mined per annum and a failure to pay the royalty of ten cents per ton upon two hundred thousand bushels per annum will work a forfeiture of all the rights and privileges herein conveyed, but in case of fire, wind or water, or from reason of strikes by the miners, or other casualties over which the party of the second part has no control, then the party of the second part shall have time to rebuild, or repair damages and shall not be held liable for any production or royalty during such time, nor shall such time be counted against him, or reckoned in production, nor shall the same operate as a forfeiture of any right or privilege granted herein.

48 Seventh. The party of the first part shall have a superior lien on the coal fixtures and improvements on said land, or to be placed thereon, as security for the rent, or royalty to be paid for the coal mined and taken from said land under this lease; but the party of the second part shall have the right, after royalty and rent have been settled on all coal mined and shipped from said mines under this lease, to remove all and *and* every improvement, building of any character whatever, that they may have built or placed on said tract of land by reason of this lease.

Eighth. The party of the second part, his heirs and assigns, shall have the option of extending this lease for fifty years after the expiration of this lease on the terms as hereinbefore set forth.

Ninth. A royalty of three cents per ton shall be paid for all "nut" coal that may be shipped and mined from said lands and the screen for lump coal shall be made as the customary screen and the bars shall not exceed twelve feet long and one and one-eighth inch between the bars.

Tenth. The parties of the first part and of the second part shall locate a certain parcel of land to be set apart for building purposes.

Eleventh. Should this lease, for any reason, be vacated by the party of the second part the mines shall be left in mining-like manner and shall be conducted in mining-like manner and shall be subject to inspection by the parties of the first part.

In testimony whereof we hereunto affix our signatures July 5th, 1877.

Attest:
J. CORDIER.

JARRATT R. SHELTON.

M. A. BRASHER,
By BENJ. ROBINSON,
Her Attorney-in-Fact.

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BENJ. ROBINSON,
A. J. ROBINSON,
A. H. BRASHER, JR.,
P. D. BRASHER,
S. A. CORDIER,
J. CORDIER,
Parties of the First Part.
A. L. BLACKMAN,
Party of the Second Part.

HOPKINS COUNTY, KENTUCKY, *ss:*

I, C. W. Crabtree, clerk of the Hopkins county court, certify that the foregoing deed from Mary Ann Brasher and others to A. L. Blackman was produced to Thomas J. McEwen, my deputy clerk, as his endorsement thereon will show, and acknowlegded by Benjamin Robinson and A. J. Robinson, his wife, A. H. Brasher and P. D. Brasher, his wife, parties thereto, in substance as follows: August 6th, 1877, acknowledged by Benjamin Robinson and A. J. Robinson, his wife, and A. H. Brasher and P. D. Brasher, his wife, to be their act and deed in due form of law; Thos. J. McEwen, D. C., for C. W. Crabtree, clerk H. C. C.; whereupon the same was ordered to be certified to the proper office for record, which is now done accordingly.

Given under my hand this August 14th, 1877.

C. W. CRABTREE, *Clerk.*

STATE OF KENTUCKY, *Christian County,* } *ss:*

I, John W. Breathitt, clerk of the county court for the county and State aforesaid, do certify that the foregoing lease was on the 5th day of July, 1877, produced to C. A. Brasher, my lawful deputy in this county, and acknowledged by Joseph Cordier and S. A. Cordier, his wife, to be their act and deed as per endorsement thereon, viz: "Acknowledged in due form before me by Joseph A. Cordier and S. A. Cordier, his wife, July 5th, 1877; C. A. Brasher, D. C., for J. W. Breathitt, C. C. C. C.," and properly lodged, certified, as shown by the above certificate, as to Benj. Robinson and A. J. Robinson, his wife, A. H. Brasher and P. D. Brasher, his wife; whereupon said lease was lodged for record and was, together with this and the foregoing certificate, duly recorded in my office.

50 Witness my hand August 11th, 1877.

JOHN W. BREATHITT, *Clerk.*

August 6th, 1877.—Acknowledged by Benj. Robinson and A. J. Robinson, his wife, and A. H. Brasher and P. D. Brasher, his wife, to be their act and deed in due form of law.

THOS. J. McEWEN, *D. C.,*
For J. W. CRABTREE, *C. H. C. C.*

Acknowledged in due form before me by Joseph Cordier and S. A. Cordier, his wife, July 5th, 1877.

C. A. BRASHER, *D. C.,*
For J. W. BREATHITT, *C. C. C. C.*

L. R., 11th, 1877 (Deed Book No. 55, page 118).

EXHIBIT "D."

This indenture, made and entered into, by and between Larkin C. Croft and Mary V. Croft, his wife, parties of the first part and Albert L. Blackman of the city of Nashville, State of Tennessee, party of the second part, witnesseth: That the parties of the first part have leased and do hereby lease, grant and convey unto the party of the second part, his heirs and assigns, the exclusive mining privilege and the right to mine, ship and sell all the coal from off and under all that tract of land upon which the parties of the first part now live, the same being and lying in Christian county, State of Kentucky and bounded as follows: Said land is bounded on the east by the land of the Bourland heirs; on the south by the land of the A. H. Brasher heirs; on the west by the lands of D. M. Wooldridge; on the north by the lands lately owned by the railroad company, said tract now said to contain two hundred and twenty-seven acres, more or less and the same is not encumbered by lien or mortgage; to have and to hold the same to him, the party of the second part, his heirs and assigns, the exclusive mining privilege, with the right to mine, use, sell and ship the coal from off and under said tract of land subject to the con-
51 ditions and limitations herein imposed and for the considerations hereinafter named, for and during a term of fifty years from the first day of August, 1877 and the conditions and considerations of this deed are as follows, to wit:

First. The parties of the first part lease and convey and hereby set over to the party of the second part, his heirs and assigns for the term of fifty years from the first day of August, 18777, the exclusive mining privilege and the right to mine, use, sell and ship all the coal from off and under said tract of land for the consideration of ten cents per ton for each and every ton of lump coal or block coal, mined, used or shipped from said land during this lease; but no royalty shall be paid for nut or slack coal. The royalty of ten cents per ton is for lump or block coal and shall be paid monthly in instalments and the books of the party of the second part shall be open for inspection to the parties of the first part for settlement once each month.

Second. It is agreed that the party of the second part shall have the exclusive right of way or ways over and across said land for railways, tramways, or wagon roads for mining purposes with the right to transport coal, coal cars and materials and such other articles as the party of the second part may desire, provided such ways shall not exceed twenty-five feet in width each.

Third. The party of the second part, his heirs or assigns, shall have the use of any water or springs found on said land for mining purposes, etc., free of charge.

Fourth. The party of the second part, his heirs, or assigns, shall have the use of timber on said tract of land for trestles, cross-
52 ties, or other mining purposes, free of charge and shall have the privilege to erect such houses and buildings as may be

necessary for prosecuting said mining business and a parcel of land shall be selected and located for such purposes by the parties hereto, but, should this lease be vacated then the party of the second part shall have the right to remove any and all fixtures and buildings that he may erect by reason of this lease.

The party of the second part his heirs and assigns shall commence to prospect for coal on said land within twelve months from the date hereof; and, if there should be coal of sufficient thickness and quantity found then the said party of the second part shall commence to develop the same in good faith within twelve months thereafter and, after the mines shall have been fully opened for one year, there shall not be less than two hundred thousand bushels mined per annum and, should the party of the second part fail to pay for that amount at the rate of ten cents per ton per annum, then this lease and all the covenants herein conveyed are null and void. And it is further agreed that the party of the second part shall not sell or establish any liquor house or saloon on said tract of land.

LARK. C. CROFT.
MARY V. CROFT.
A. L. BLACKMAN,
Party of Second Part.

Nov. 14th, 1877.—For value received I this day transfer one undivided one-third interest in the above lease to J. H. Criddle.

A. L. BLACKMAN.

STATE OF KENTUCKY, *Christian County,* } *ss:*

I, John W. Breathitt, clerk of the county court for the county and State aforesaid, do certify that the foregoing lease was on the 8th day of August, 1877, produced to C. A. Brasher, my lawful
53 deputy in this county, and acknowledged by Lark. C. Croft to be his act and deed as per endorsement thereon, to wit, "Acknowledged in due form before me by Lark. C. Croft Aug. 8th, 1877; C. A. Brasher, D. C., for J. W. Breathitt, C. C. C. C.," and was again produced to my said deputy on the 13th day of August, 1877, and acknowledged by Mary V. Croft to be her act and deed as per endorsement thereon, to wit, "Acknowledged before me by Mary V. Croft Aug. 13th, 1877; C. A. Brasher, D. C., for J. W. Breathitt, C. C. C. C.," whereupon the said lease was lodged for record and was, together with this certificate, duly recorded in my office.

Witness my hand this 15th day of September, 1877.

J. W. BREATHITT, *Clerk.*

(Deed Book No. 55, page 196.)

Acknowledged in due form before me by Lark. C. Croft, Aug. 8th, 1877.

C. A. BRASHER, *D. C.*,
For J. W. BREATHITT, *C. C. C. C.*

Acknowledged before me by Mary V. Croft, Aug. 13th, 1877.

C. A. BRASHER, *D. C.*,
For J. W. BREATHITT, *C. C. C. C.*

EXHIBIT "E."

STATE OF KENTUCKY, }
County of Christian, } *ss:*

Know all men by these presents that we, Albert H. Brasher and P. D. Brasher, his wife, for and in consideration of one dollar to us in hand paid and for the consideration of a certain lease of a certain tract or parcel of land leased to A. L. Blackman in which we are interested, *we* this day bargain and sell, agree and grant unto A. L. Blackman, his heirs and assigns, and do by these presents grant, set over, and assign to the said A. L. Blackman, his heirs and assigns, the right, use, and privilege of opening such roads over and through a certain tract of land now owned by us and bounded as follows: On the east by the St. Louis & Southeastern railway, on the south by the lands of G. C. Croft, on the west by the lands of A. L. Brasher, dec., on the north by the lands of L. C. Croft and F. Bourland's
54 heirs; and we do hereby grant unto said A. L. Blackman, heirs, and assigns the right of way or ways for tramways, wagon roads, over and through and across said land at such places as to him, the said Blackman, his heirs and assigns may find most direct and advantageous in the opening and working the coal measures on the old Coaltown property the said lands of A. H. Brasher, dec'd; and the said Blackman, heirs, and assigns shall have the right and privilege to lay down such railway tracks and other roads necessary to the carrying on their mining operations and for the privilege of carrying to and from said mines and other places coal, produce, wares, merchandise, and other articles on such roads in vehicles, cars, wagons, or otherwise as may to them seem fit, free of charge, for and during the term of fifty years from the date hereof.

In testimony whereof we have hereunto set our hands this day, May 24th, 1877.

A. H. BRASHER.
P. D. BRASHER (*Wife*).

Witness:
LOUIS E. SALMON.
A. F. SALE.

Aug. 6th, 1877.—Acknowledged by A. H. Brasher and P. D. Brasher, his wife, to be their act and deed in due form of law.

THOS. J. McEWEN, *D. C.*,
For C. W. CRABTREE, *Clerk.*

EXHIBIT "F."

STATE OF KENTUCKY, }
County of Christian, } *ss:*

This agreement made and entered into this day by and between A. H. Brasher and P. D. Brasher, his wife, of the first part and A. L. Blackman of the second part, witnesseth that for and in consid-

eration of one dollar in hand paid and for the other valuable consideration hereinafter named, we this day bargain and sell, lease, assign and set over unto the said A. L. Blackman, his heirs and assigns, for the term of fifty years from the date hereof, the
55 exclusive right and privilege to mine and take away, use and sell coal from a certain parcel or tract of land lying and being situated in the county of Christian, State of Kentucky, bounded as follows: on the east by the lands of W. W. and F. C. Brasher; on the south by the lands of C. G. Croft; on the west by the lands of A. H. Brasher dec'd and on the north by the lands of L. C. Croft and F. Bourland's heirs, said to contain seventy-five acres, more or less. And the said Blackman, his heirs and assigns, shall have the right to erect thereon such buildings, trestles, houses, tramways, or railways, to lay out and use such roads, tramways and railroads as he or they may find necessary to the operating, opening, mining and carrying on said mining business and shall have the use of timber for inside and outside mines, for trestles, tramways and the use of water for all purposes and may use any spring or springs found on said premises, free of charge (but such grant of timber shall not be construed as to be used for building houses); but may cut and use the timber necessary for said mining purposes, free of charge for and during a term of fifty years. A. L. Blackman party of the second part, for and in consideration of the above grant of privileges and lease agrees to pay to the said A. H. Brasher and P. D. Brasher, his wife, his heirs or assigns, ten cents per ton on all lump coal mined, shipped and sold from said mines from said land during the term of the lease and grant and the said Blackman, his heirs and assigns, shall commence to open and operate said mines within twelve months from the date hereof; or, failing in this the lease shall be null and void. The said Blackman, his heirs and assigns, shall pay such royalty of ten cents per ton on every ton of lump or block coal taken from said land by them in monthly instalments; but said Blackman, heirs and assigns, shall not pay any royalty for any nut or slack coal taken from said mines. Witness our hands this May 24th, 1877.

A. H. BRASHER.
56 P. D. BRASHER (*His Wife*).
A. L. BLACKMAN.

HOPKINS COUNTY, } *ss:*
State of Kentucky, }

I, W. C. Crabtree, clerk of the county court of said county, said State, do certify that the foregoing deed from A. H. Brasher and wife to A. L. Blackman was produced to Thomas J. McEwen, my deputy clerk, as his endorsement thereon shows, and acknowledged by the grantors in substance as follows: "August 6th, 1877, acknowledged by A. H. Brasher and P. D. Brasher, his wife, to be their act and deed in due form of law; Thos. J. McEwen, D. C., for C. W. Crabtree, clerk;" all of which is hereby certified to the proper office for record.

Witness my hand this September 8th, 1877.

C. W. CRABTREE, *Clerk.*

STATE OF KENTUCKY, *Christian County,* } ss:

I, John W. Breathitt, clerk of the county court for the county of Christian and State aforesaid, do certify that the foregoing deed from A. H. Brasher and wife, P. D. Brasher, to A. L. Blackman was this day produced to me in my office, duly certified as above, for record. Whereupon said deed was lodged for record and was, together with this certificate and the above, duly admitted to record.

Given under my hand this September 10th, 1877.

JOHN W. BREATHITT, *Clerk.*

August 6th.—Acknowledged by A. H. Brasher and P. D. Brasher, his wife, to be their act and deed in due form of law.

Deed Book 55, page 190.

THOS. J. McEWEN, *D. C.*
C. W. CRABTREE, *C. H. C. C.*

Nov. 14th, 1877.—For value received I have this day transfer- the one undivided one-third interest in the above *to* lease to J. H. Criddle.

A. L. BLACKMAN.

EXHIBIT "G."

This indenture, made and entered into, this day, by and between J. W. Long and Melissa Long, his wife, parties of the first
57 part and Albert L. Blackman, of the city of Nashville, State of Tennessee, party of the second part, witnesseth: That the parties of the first part have leased and do hereby lease and convey unto the party of the second part, his heirs and assigns, the exclusive mining privilege and the right to mine, use, sell and ship all the coal off and under all that tract of land, the same being and lying in Christian county, State of Kentucky, and is bounded as follows: It is bounded on the east by the lands of Joseph Legget and Thomas Gilkey; on the south by the lands of the railroad company; on the west by the lands of Joseph Cordier; on the north by the lands of Thomas Green and on the northeast Joseph Legget; and said to contain two hundred and sixteen acres, more or less; and also all the land of the place on which the parties of the first part now live, said to contain seventeen acres, more or less; and the same is not encumbered by any lien or mortgage; to have and to hold the same to him, the said party of the second part, his heirs and assigns, for and during the term of fifty years from the date hereof, the exclusive mining privilege and the right to mine, use and ship the coal from off and under said tracts of land, subject to the conditions and limitations herein imposed and for the consideration hereinafter named; and the conditions and considerations of this lease are as follows, to wit:

First. The parties of the first part hereby lease and convey unto the party of the second part, his heirs and assigns for the term of fifty years from the date hereof, the exclusive mining privilege, with the right to mine, use and ship all the coal and iron from off and under said tracts of land for the consideration of ten cents per ton for each and every ton of lump coal or block coal mined, used, shipped, or sold from off or under said tract of land during this lease
58 and ten cents per ton for each and every ton of iron ore mined and used from said land during the continuance of this lease. And the royalty of ten cents per ton on lump or block coal shall be paid in monthly installments and also the royalty on the iron ore in like manner; and the books of the party of the second part shall be open for inspection once each month for settlement with the parties of the first part. No royalty shall be paid for nut or slack coal.

Second. It is agreed that the party of the second part, his heirs and assigns, shall have the exclusive right of way, or ways, for tramways, railways, or wagon roads across and over said tracts of land for mining purposes, with the right to transport such coal, cars, material and such other articles as the second party may desire free of charge.

Third. The party of the second part shall have the use of timber on said land for mining purposes, to be used on said land for crossties, trestles, mining timbers, etc., also use of any water for mining purposes, men, animals, etc., free of charge.

Fourth. And the party of the second part shall have the right to erect houses for mining purposes and such other buildings as may be necessary in the prosecution of said mining business and the parties hereto shall select a parcel of land for such building purposes and such building land shall be free of charge. And should this lease, for any reason be vacated by the party of the second part, his heirs, or assigns, he, or they, shall have the right to remove any fixtures or buildings, he or they may erect by reason of this lease, after the royalty on coal have been fully settled and paid.

59 Fifth. The party of the second part shall commence to prospect said lands for coal within twelve months from the date hereof and should there be coal of sufficient thickness and quantity found, then the party of the second part shall commence to develop said coal in good faith with 12 months thereafter; and, after the mines have been fully opened for one year, there shall not be mined on an average less than 200,000 bushels per annum; and a failure to pay royalty of ten cents per ton on that amount per annum shall work a forfeiture of all the rights and privileges herein conveyed and this lease shall be null and void, otherwise remain in full force. But, it is agreed that no timber shall be taken from said land to be used for mining on any other lands.

In testimony whereof we have hereunto affix- our signatures.

J. W. LONG.
MELISSA B. LONG.
A. L. BLACKMAN,
Party of Second Part.

Nov. 14th, 1877.—For value received I this day transfer one undivided one-third interest in the above lease to J. H. Criddle.

A. L. BLACKMAN.

STATE OF KENTUCKY, *Christian County,* } *ss:*

I, Jno. W. Breathitt, clerk of the county court of said county and State, do certify that the foregoing lease to A. L. Blackman was produced to A. C. Brasher, my lawful deputy for said county, on the 13th day of August, 1877, and acknowledged by M. B. Long to be her act and deed, and was also acknowledged before him on the 13th day of October, 1877, by J. W. Long to be his act and deed as per endorsement thereon, to wit: "Acknowledged in due form before me by M. B. Long Aug. 13th, 1877; C. A. Brasher, D. C., for J. W. Breathitt, C. C. C. C." Acknowledged before — by M. B. Long Oct. 13th, 1877; C. A. Brasher, D. C., for J. W. Breathitt, C. C. C. C." The transfer attached to the foregoing lease was also acknowledged by A. L. Blackman to be his act and deed;
60 whereupon the same was lodged for record and was, with this certificate, duly recorded in my office.

Given under my hand this November 15th, 1877.

JOHN W. BREATHITT, *Clerk.*

Deed Book 55, page 315.

Acknowledged before me in due form by M. B. Long Aug. 13th, 1877.

C. A. BRASHER, *D. C.,*
For J. W. BREATHITT, *C. C. C. C.*

Acknowledged before me in due form by J. W. Long Oct. 13th, 1877.

C. A. BRASHER, *D. C.,*
For J. W. BREATHITT, *C. C. C. C.*

EXHIBIT "H."

This indenture, made and entered into, this day, by and between Joseph Cordier and Serina Cordier, his wife, parties of the first part and Albert L. Blackman of the city of Nashville, State of Tennessee, party of the second part, witnesseth: 1st. That the parties of the first part have leased and do hereby lease and convey to the parties of the second part, his heirs and assigns, for the term of fifty years from the date hereof, the exclusive mining privilege, with the right to mine, use, sell and ship all the coal from off and under two certain tracts of land, lying and being situated in Christian county, State of Kentucky, the first tract being bounded as follows, to wit: It is bounded on the east by the lands of Doctor J. W. Long, on the south by the lands of the Bourland heirs; on the west by the lands of the railroad company; on the north by the lands of Mrs.

Margie Williams and said to contain two hundred acres more or less. The second tract is bounded as follows: On the east by the lands of B. W. Crabtree; on the south by the lands of Mrs. Margie Williams; on the west by the lands of B. W. Crabtree; on the north by the lands of T. J. McEwen, said tract said to contain two hundred acres, more or less, and is situated and lying in the county of Hopkins, State of Kentucky (the two tracts making four hundred acres covered
61 by this lease) the same being unencumbered by lien or mortgage; to have and to hold, the same, to him, his heirs and assigns, the exclusive mining privilege, with the right to mine, use, sell and ship all the coal or iron ore from off and under said tracts, or parcels of land, for and during a term of fifty years from the date hereof, subject to the limitations and conditions herein imposed and for the consideration hereinafter specified, which are as follows, to wit: 1st. The parties of the first part lease for the term of fifty years from the date hereof to the party of the second part, the exclusive mining privilege, with the right to mine, use, sell and ship all the coal from off and under said tracts of land, for the consideration of ten cents per ton royalty for each and every ton of lump or block coal mined, used and sold from said lands during this lease, but no royalty shall be paid for nut or slack coal; and the royalty of ten cents per ton shall be paid in monthly instalments and the books of the party of the second part shall be open for inspection and settlement once each month with the parties of the first part. The same conditions and settlement, in like manner, shall also apply to iron ores mined and used by the party of the second part. The party of the second part, his heirs and assigns, shall have the use of timber found in said tracts of land for mining purposes, for cross-ties, trestles and timber in the mines, to be used on said lands free of charge, shall have also the right to erect such buildings as may be necessary in the conducting of said mining business, free of charge and a parcel of land shall be selected by the parties hereto and set apart for building purposes.

The party of the second part shall have the exclusive right of way, or ways, over and across said tracts of land for tram-
62 ways, railways and wagon roads for mining purposes, provided such ways shall not exceed 25 feet each in width; and shall also have the use of water found on said lands for mining purposes, men and animals free of charge.

But, should this lease be vacated by the party of the second part, his heirs or assigns, he or they, shall have the right to remove any fixtures or buildings he or they may erect by reason of this lease, after the royalty has been fully settled and paid.

The party of the second part shall commence to prospect for coal in said lands within twelve months from the date hereof and should there be coal and iron ore found sufficient in thickness and quantity, then the party of the second part shall commence in twelve months thereafter to develop in good faith said coal measures; and, after the mines are opened for twelve months, there shall not be mined less than 200,000 bushels per annum and a failure to pay ten cents per ton on that amount per annum will work a forfeiture

of all the rights and privileges herein conveyed and this lease be null and void.

In testimony whereof we have hereunto affixed our signatures, this the 10th day of August, 1877.

Nov. 14th, 1877.

J. CORDIER,
SERENA CORDIER,
Parties 1st Part.
A. L. BLACKMAN,
Party 2nd Part.

Nov. 14th, 1877.—For value received I this day transfer one undivided one-third interest in the above lease to J. H. Criddle.

A. L. BLACKMAN.

STATE OF KENTUCKY, *Christian County,* } *ss:*

I, Jno. W. Breathitt, clerk of the county court for the above county and State, do certify that the foregoing deed to A. L. Blackman was on the 13th day of August, 1877, produced to C. A. Brasher, my lawful deputy for said county, and acknowledged by the
63 grantors therein to be their act and deed as per endorsement thereon, to wit: "Acknowledged in due form before me by Joseph Cordier and Serena Cordier August 13th, 1877; C. A. Brasher, D. C., for J. W. Breathitt, C. C. C. C;" whereupon said deed was lodged for record and was, together with this certificate, duly recorded in my office.

Given under my hand this Sept. 13th, 1877.

J. W. BREATHITT, *Clerk.*

(This deed is recorded in Deed Book No. 55, page 192.)

EXHIBIT "I."

Name.	Consideration.	Amount.
Anderson & Church	Groceries	99 48
Adams & Co., R. F.	Hardware & iron	242 62
Phillips, Buttorf & Co.	Stoves, tinware	325 80
Pigue, Manier & Co.	Boots & shoes	407 80
Warren Bros.	Paints & oils	123 60
Bunch & Glasgow	Cash	914 17
Cowan & Co.	Mdse.	725 12
Evans, Fite & Porter	Dry goods	703 86
Fishell & Bro.	Dry goods	315 25
Armstrong, G. W.	Lab'rer & boarding	81 09
Armistead, W. B., Jr.	Book-keeper	23 00
Atkinson, Enoch	Miner	73
McDonald, George	Mining	25
McIntire, Jos.	Mining	1 77
Landes & Clark	Att'ys for Co.	
Morrill, J. W.	Mining	1 02

Exhibit "I"—Continued.

Name.	Consideration.	Amount.
Miller, George	Mining	5 62
Miller, Phil.	"	3 75
Menser, J. O.	Laborer	9 25
Miller, Louis	Blacksmith	24 24
Mechanics' b'k, note end's'd	E. R. Glascock	203 50
Northcott, E.	Laborer	3 12
Nelson & Caldwell	Cash & ins'ce, about	50 00
Nolan, J. H.	Mining & boarding	58 09
Nolan, S. A.	Driver	95
Nolan, H. L.	"	4 37
Ordway & Hogan	Clothing	27 18
Payne, Theodore	Mining	21 45
Powell, Wiley	Car dresser	4 00
Parson, G. W.	Laborer	70
Patton, A. Z.	Carpenter	67 95
Romans, J. B.	Iron castings for cars	251 00
Rutherford, Levi	Mining	25
Rowe, R.	"	1 25
Roland, Jas.	Stable boss	32 45
Roberts, Martin	Supplies	2 31
Roane Iron Co. (chatt.)	R. R. iron	356 40
64 Richmond, William	Pusher in mines	2 64
Radford & Co.	Cash bal., about	2,400 00
Stokes, Jas.	Tipping cars	16
St. Louis Supply Co.	Miner's oil	41 65
Seabree, Frank	Mining	90
Slayton, Jas.	"	2 62
Scott, Kit.	"	22 22
Scruggs, John	Set chairs at mines	5 00
Turner, A. J.	Laborer	40
Tate, Robert	Mining & board	47 53
Tipton, Jas.	" "	37
Tyler & Co., A.	Groceries	139 34
Winsted, Wm.	Track boss	2 40
Vulcan Iron & Nail Co.	Small R. R. iron	95 93
White, Thos.	Mining	73
Wooldridge, D. H.	Hay	5 10
Woolwine, Bryan & Reese	Tobacco & cigars	131 45
Whinney, Rob't	Mining	2 53
Wilson, John A.	"	6 44
Tavel, Eastman & Howell	Paper & printing	40 00
Brasher Heirs (lien)	Royalty & rents	549 77
Brown, M. C.	Clerk & telegrapher	95 26
Brasher, A. H.	Laborer	10 19
Blackman, A. L.	Cash & services	1,007 52

Exhibit "I"—Continued.

Name.	Consideration.	Amount.
Burns, M.	Laborer	33 51
Brownell & Co.	Lumber mill	765 00
Bell, Alex.	Miner	1 16
Brown, J. M.	"	75
Brown, Farrell & Cannon	Hardware	18 20
Buford & Warner	Queensware	93 38
Clarck, Jack	Mining boss	640 05
Criddle, J. H.	Cash & services	1,300 44
Casey, Pat.	Mining	3 42
Casey, John	"	2 13
Clayton, John	Col'd laborer	4 00
Conley, Edward	White laborer	23 39
Croft, Geo. B.	Supplies, mules & men	19 88
Cordier, Jos.	" " "	92 45
Causler, J. W.	Labor	7 97
Causler, Jas. H.	"	5 53
Cahill, F. P.	Office rent, about	20 00
Cooke, B. H. & Co.	Clothing	476 10
Causler, W. C.	Mining timbers	5 75
Catie, John	Mining	1 89
Day, C. H.	Unpaid freight	35 00
Dunning, F. S.	Mining	1 55
Davis, E. W.	Waggoning	17 85
Denton, D. S.	Mining	55
Drake & Co.	Lumber	135 93
Davis & Ogburn	Cash bal.	1 25
Dunning, Elias	Mining	2 31
Dunning, John	"	7 26
Dunning, P. G. (boy)	Mule driver at pump	7 15
Earl, Mark	Min'g	9 23
Edwards, Wm.	"	2 45
Faull, Geo. H.	"	33 30
Goodbar, White & Co.	Hats	205 66
Grautham, P. A.	Mining	5 75
Glasgow, W. T.	Services	50 00
Griffith & Garrett	Hardwar-, about	25 00
65 Hearn, Abner	Mining	13 00
Hodges, Jas	Carpenter	44 15
Harlan, John	Mining	08
Helms, J. P.	Att'y for Co.	
Johnston, J. S.	Fresh meat for men	166 48
Knight, E. D.	Mining	17 69
Leavell, L. E.	Weighing boss	55 00
Lafoon, G. P.	Mining	70
McFadden, C.	Painting	40

EXHIBIT "J."

This indenture, entered into this December 27th, 1877, between Mary Croft and George Croft of the county of Christian and State of Kentucky, parties of the first part and A. L. Blackman of the city of Nashville, State of Tennessee, of the second part: Witnesseth that the party of the first part, in consideration of the sum of four hundred and six dollars and eighty-seven cents, to be paid six months after date, as per promissory note of even date, do hereby sell and convey to the said A. L. Blackman, his heirs and assigns forever, a certain tract, or parcel of land, lying in the county and State aforesaid and on the St. Louis & Southeastern railway and bounded as follows: Beginning at a stake 18 feet south of where the Empire Coal Company's railroad connects with the St. Louis & Southeastern railway track; thence running in a westerly direction 18 feet south of said Empire Coal Company's railroad until said road crosses the Aquilla H. Brasher line; thence with said Brasher line in a northerly direction to a corner in a line of a tract belonging to Albert H. Brasher; thence with his line in an easterly direction to the St. Louis & Southeastern railway; thence south with the said railway track to the beginning, containing 23¼ acres, more or less; to have and to hold land in the above-described boundary, except the lot below specified, to the said A. L. Blackman and his heirs and assigns forever with title of general warranty. And the said party of the first part hereby retain the mining privileges, but such mining privileges shall not interfere with or damage the buildings or hinder the occupation of the same of or by the party of the second part. And in the land a boundary above specified it is understood that the lot hereinafter described is not a part of this conveyance. The boundary of the lot hereby reserved is as follows: Beginning at a large oak tree on the northeast corner of Main and Railroad street-; thence running west with said Main street fifty feet; thence north sixty feet to an alley; thence east fifty feet to Railroad street; thence with said street to the beginning sixty feet: And the parties of the first part hereby retain a lien on the land for the payment of, the purchase-money. Serena F. Croft hereby relinquishes her right of dower in the land conveyed in this deed.

66

Witness our hands this day and date above written.

Attest: C. A. BRASHER.

G. B. CROFT.
SERENA F. CROFT.
her
MARY x CROFT.
mark.

STATE OF KENTUCKY, }
Christian County, } *ss:*

I, John W. Breathitt, clerk of the county court for said State and county, do certify that the foregoing deed to A. L. Blackman was on the 11th day of January, 1878, produced to C. A. Brasher, my lawful deputy in this county, and acknowledged by Mary Croft and others to be their act and deed as per endorsement thereon, to wit. "Jan. 11th, 1878, acknowledged in due form before me by Mary Croft, G. B. Croft, and Serena Croft; C. A. Brasher, D. C., for J. W. Breathitt, C. C. C. C.;" whereupon said deed was lodged for record and was, together with this certificate, duly recorded in my office.

Given under my hand this 8th day of Feb., 1878.

JOHN W. BREATHITT, *Clerk.*

(Recorded in Deed Book No. 55, page 515.)

67 EXHIBIT "K."

The board of the president and directors met on Monday, the 6th day of May, 1878, that being the regularly appointed day for the monthly meeting. Present: J. H. Criddle, A. L. Blackman, and J. P. Helms, the other two directors, W. T. Glasgow and W. H. Bunch, having since our last meeting transferred their stock and tendered their resignations, which were duly accepted, thus leaving a vacancy in the board of two members. Whereupon it was moved and seconded that the board proceed to an election to fill said vacancies, which election, being had, resulted in the unanimous election of M. W. Lewis and A. M. Carroll to fill the unexpired term of the said vacancies in the directorship, they both being stockholders in the company. The requisite notice was then given to all the stockholders of the company that a motion will be made at the next regular monthly meeting of the board of directors to amend article 19 of the by-laws of the company, to the effect that stock should only be transferred by proper assignment on the back and transfer books of the company. This being the only business before the board, it adjourned until the next regular monthly meeting.

A. L. BLACKMAN, *Pres't.*

J. H. CRIDDLE, *Sec'y.*

The board of the president and directors met on Monday, the 3d day of June, 1878, that being the day for the regular monthly meeting of the board. Present: J. H. Criddle, J. P. Helms, A. L. Blackman, M. W. Lewis, and A. M. Carroll. It was moved and seconded that article 19 of the by-laws of the company be so amended that at the end of section 1st of said article shall read as follows, viz: "That stock in this company shall only be transferrible
68 by assignment on the back of the certificate and on the books of the company, the latter to be made by the secretary of the company upon notice to him or of presentation of the assigned cer-

tificate;" which motion prevailed, all the stockholders voting in the affirmative, and the said by-laws declared to be so amended. There being no further business before the board, it was adjourned until the next regular monthly meeting.

A. L. BLACKMAN, *Pres't.*
J. H. CRIDDLE.
J. P. HELMS.
M. W. LEWIS.
A. M. CARROLL.

J. H. CRIDDLE, *Sec'y.*

The board of directors met on Monday, July 1st, 1878, that being the day for their regular monthly meeting (the president being absent). Present: J. H. Criddle, J. P. Helms, M. W. Lewis, and A. M. Carroll. The president being absent and the board, called to order by the secretary, proceeded to elect a president *pro tempore;* whereupon M. W. Lewis moved that J. P. Helms be elected president *pro tempore,* which motion was duly seconded and J. P. Helms unanimously declared to be president *pro tempore,* and upon taking the chair called the board to order; whereupon a written communication of A. L. Blackman, dated June 19th, 1878, to the secretary and treasurer, appointing W. T. Glasgow president *pro tempore,* was read. In consideration whereof the board declared that the president had no such power, because Mr. Glasgow was not a director of the company at the time of the appointment, but that, as Mr. Glasgow has and is to perform valuable services to the company during Mr. Blackman's absence, they consider that he shall receive the salary that A. L. Blackman was to receive as president from the day of his appointment, to wit, one hundred and fifty dollars per month, and A. L. Blackman's salary shall cease from that
69 date until his return. It was agreed also that J. H. Criddle's salary, acting as book-keeper and secretary and treasurer, should be one hundred and fifty dollars per month from June 1st, 1878. There being no further business before the board, it was duly adjourned until our regular meeting on the first Monday in August.

J. P. HELMS,
Pres't Pro Tem.
J. H. CRIDDLE.
M. W. LEWIS.
A. M. CARROLL.

J. H. CRIDDLE, *Sec'y.*

The board of president and directors met on Monday, the 5th day of August, the day of the regular monthly meeting. Present: J. P. Helms, J. H. Criddle, M. W. Lewis, and A. M. Carroll.

There being no further business before the board, it adjourned until the next regular meeting in September.

J. P. HELMS,
Pres't Pro Tem.
J. H. CRIDDLE.
M. W. LEWIS.
A. M. CARROLL.

J. H. CRIDDLE,
Sec'y & Treas.

It becoming apparent to the president *pro tem.* as well as all the directors of the company that the financial condition of the company was such that unless some arrangement could be made with the creditors of the company for an extension of time for the payment of their indebtedness that the company must sacrifice its property at a great loss to the company under judicial sales, suits, and attachments being threatened; whereupon the president called a meeting of the directory for August the 9th, 1878, at four o'clock p. m., at which time the president *pro tem.*, J. P. Helms, was present with the following directors: J. H. Criddle, A. M. Lewis, and A. M. Carroll. The board was called to order and, there being no
70 further business before it than the question of the settlement of the indebtedness of the company, the board proceeded to a consideration of the same.

It was made known to the board by some of its members that various plans for a settlement with the creditors had been discussed with them, and they had finally agreed to accept from the company a deed of trust of all its rights, privileges, property, and franchises belonging to or in anywise pertaining to the Empire Coal and Transportation Company, limited to the payments of the debts of the company, to the 2nd day of May, 1879, or may be closed sooner if the trustee finds that running the same does not pay expenses after a reasonable experiment, and the conveyance to be made to W. T. Glasgow as trustee, with such powers vested in him as will be necessary to carry on the business, which deed is to be drawn and executed and registered at Hopkinsville, Kentucky. This being the ultimatum of the creditors, the directory, after due consideration of this proposition and feeling that it is the only means of preventing immediate loss and disaster, agreed and directed unanimously that the proposition of the creditors be accepted, and that when the trust conveyance is drawn that the president *pro tempore* and the secretary and treasurer shall sign and acknowledge said conveyance, and, when so executed, the same shall be the act and deed of the board of president and directors.

There being no further business before the board, it was adjourned until the next regular meeting.

J. P. HELMS,
Pres't Pro Tem.
J. H. CRIDDLE.
M. W. LEWIS.
A. M. CARROLL.

J. H. CRIDDLE,
Sec'y & Treas.

Whereupon a meeting of the stockholders was held pur-
71 suant to a call for the purpose of ratifying the action of the board of directors in making the above conveyance, and, upon a call for the votes of the stockholders upon the question, the following persons voted in the affirmative for ratifying the action of

the board of directors in making said conveyance, no one present in the negative:

J. H. Criddle voted 315 shares.

J. P. Helms voted 1 share.

W. H. Bunch voted 810 shares as proxy for W. L. Radford & Co., of Memphis, Tennessee.

Bunch & Glasgow voted 240 shares.

M. W. Lewis voted 1 share.

A. M. Carroll voted 1 share.

W. T. Glasgow voted 1 share.

Nashville, Tennessee, August the ninth, 1879.

The board of directors met Monday, September 2nd, 1878, it being the regular day of meeting of the company—present, J. P. Helms, pres. *pro tem.*; J. H. Criddle, sec'y, and A. M. Carroll—and, there being no business before the board, it adjourned until the next regular monthly meeting.

J. P. HELMS,
Pres. Pro Tem.
J. H. CRIDDLE.
A. M. CARROLL.

J. H. CRIDDLE, *Sec'y.*

Pursuant to a meeting called by the president *pro tem.* for this day, Tuesday, September 17th, 1879, of the board of directors, when J. P. Helms, president *pro tem.*, was present, and also J. H. Criddle and A. M. Carroll, A. L. Blackman being in Europe and M. W. Lewis being in the city of New York, a quorum being present, they proceeded to consider the proposition of the creditors of the company to subscribe for the stock of the company at seven and a half cents on the dollar, face value thereof, in payment of all their
72 debts against said company and allow A. L. Blackman the sum of $——, face value, as his share of the stock in the said company, and allow J. H. Criddle the sum of $——, face value, as his share of the stock in the said company, and all of the present stockholders to endorse all of their certificates of stock over to the company and receive new certificates upon the basis above stated, this contract having been entered into in writing, showing the amount due each creditor and the terms of subscription, which paper is now in the hands of W. T. Glasgow, a sufficient number of creditors having signed the same to justify them in assuming the payment of all claims of creditors who may decline to subscribe for stock on the basis aforesaid, thus assuring the company that all of their debts will be liquidated; and it being apparent to the company that some decisive step must be taken to prevent a loss and sacrifice to the present stockholders, a sale of the stock and franchises of the company being threatened, and it being possible as well as probable that such a sale will take place in the near future unless this proposition should be accepted, *and* J. P. Helms, pres. *pro tem.*, presented for the consideration of the board a power of attorney from A. L. Blackman in these words:

"To whom it may concern:

This is to certify that I have this day and by these presents do appoint and constitute John P. Helms, Esquire, of the city of Nashville, State of Tennessee, one of the United States of America, my attorney-in-fact, with full power to act for me in as full and complete a manner as though done by myself, to transact all or any business for me of whatsoever character connected with the sale and transfer of stock of the Empire Coal and Transportation Company, and to make such contracts for the settlement of said company's liabilities, to sign my name or do any other matter or kind of business in connection therewith that may arise, and to
73 act for me in as full and complete manner as *as* though done by myself.

In testimony whereof I hereunto affix my signature. Done in the city of Paris, France, this August 13th, 1878.

A. L. BLACKMAN.

Witnesses:
RETT M. HOOPER.
DAVID T. S. FULLER."

Certificate.

U. S. CONSULATE GENERAL, PARIS, FRANCE.

Be it known that on the 13th day of August, A. D. 1878, before me, Lucius Fairchild, consul general of the United States of America, at Paris, France, personally appeared A. L. Blackman, personally known to me to be the person named — and who executed the within instrument, and he acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal the day and year above written.

LUCIUS FAIRCHILD,
Consul General, Paris, France.

And upon consideration it was moved by J. H. Criddle and seconded that the proposition of the creditors be in all things accepted, and that J. P. Helms, for and in the name of A. L. Blackman, endorse all of his certificates of stock to the company, except such as A. L. Blackman may have in his possession, which upon his return home he is to endorse to the company and receive new certificates for the amount hereinbefore named as his share of the stock, and J. H. Criddle is to endorse all of his stock to the company and receive new certificates for the amount of his share as hereinbefore stated. The other stockholders, J. P. Helms, M. W. Lewis, A. M. Carroll, and W. T. Glasgow, are to endorse their respective shares to the company. There being no further business before the board, it adjourned to meet the 25th day of September, 1878, at four o'clock p. m., which is a stockholders' meeting, to elect

new officers for the company for the ensuing year, and which
74 is by consent of all the present officers.

J. P. HELMS,
Pres. Pro Tem.
J. H. CRIDDLE.
A. M. CARROLL.

J. H. CRIDDLE, *Sec'y.*

Nashville, Tennessee, Sept. 17th, 1878.

On this the 25th of September, 1878, the stockholders of the Empire Coal and Transportation Company met pursuant to the agreement of the present president and directors and stockholders and the call of the stockholders heretofore made for this date. Present: The president *pro tem.*, J. P. Helms, and J. H. Criddle, and the following stockholders, viz: Bunch & Glasgow, Cowan & Co., J. H. Criddle, Buford & Warner, John Clark, and Woolwine, Bryan & Reece, representing in all 1,518$\frac{3}{4}$ths shares of the stock of said company out of the two thousand shares of the company; and, upon the meeting being called to order, the president *pro tem.* announced the nominations for directors for the ensuing year in order, when Samuel Cowan put the following persons in nomination for the directors, as follows: J. W. Manier, W. H. Evans, R. F. Adams, Sam'l Cowan, and W. T. Glasgow; and there being no other nominations, Mr. Leslie Warner was appointed teller to receive the ballots, and upon the ballot being taken it resulted in each of the nominees receiving 1,518$\frac{3}{4}$ votes; whereupon the president *pro tem.* declared the said-named gentlemen as duly elected directors of the company for the ensuing year; and thereupon a meeting of the stockholders adjourned to the next regular annual meeting of the stockholders for the election of directors, one year hence, unless sooner convened.

J. P. HELMS,
Pres. Pro. Tem.

J. H. CRIDDLE, *Sec'y.*

On the 25th day of September, 1878, the newly elected directors met for the purpose of electing a president, secretary, etc. Present:
75 W. H. Evans, J. W. Manier, Samuel Cowan, R. F. Adams, and W. T. Glasgow. W. H. Evans being called to the chair, it was moved by Sam'l Cowan that W. H. Evans be elected president of the company to serve until the first Monday in April, 1879, that being the regular annual meeting of the company under the third article of the by-laws for the election of officers. The motion being seconded, it — carried unanimously, and W. H. Evans declared duly elected president of the company.

The president in the chair then announced in order the nomination of secretary and treasurer, to serve until the first Monday in April, 1879. W. T. Glasgow was nominated and duly elected secretary and treasurer as aforesaid, receiving all the votes of the directory, and his salary fixed at one hundred and twenty-five dollars per

month. There being no further business before the board, it adjourned to meet on Saturday, 28th instant, for the purpose of determining how the sale of coal at Nashville should be conducted.

W. H. EVANS, *Pres.*

W. T. GLASGOW, *Sec'y.*

On Saturday, 28th September, 1878, the board of directors met, pursuant to adjournment. Present: J. W. Manier, Sam'l Cowan, R. F. Adams, and W. T. Glasgow. The president being absent, J. W. Manier was chosen president *pro tem.*, and, all the points bearing upon the matter for which this meeting was called having been duly considered, it was resolved by unanimous voice of the board that the company discontinue the sale of coal to a general agent at Nashville, as heretofore done, and W. T. Glasgow was instructed to conduct the agency at Nashville under the management of the company and to employ such means as he may find necessary for the successful and profitable management thereof. The meeting then adjourned until the next regular monthly meeting.

J. W. MANIER,
Pres. Pro Tem.

W. T. GLASGOW, *Sec'y.*

76 The board of president and directors met Monday, September the 2nd, 1878, the day of their monthly meeting. Present: W. H. Evans, J. W. Manier, R. F. Adams, Sam'l Cowan, and W. T. Glasgow. There being no regular business before the board, it adjourned until the regular meeting *in* October 17th, 1878.

The board of president and directors met on Monday, October the 7th, 1878, the day of their regular monthly meeting. Present: W. H. Evans, J. W. Manier, R. F. Adams, Samuel Cowan, and W. T. Glasgow.

There being no business before the board, it adjourned until the regular meeting November 4th, 1878.

The board of president and directors met on November 4th, 1878, the day of their regular monthly meeting. Present: W. H. Evans, J. W. Manier, R. F. Adams, Sam'l Cowan, and W. T. Glasgow.

There being no business before the board, it adjourned until the regular meeting December 2nd, 1878.

The board of president and directors met on Monday, December the 2nd, 1878, the day of their regular monthly meeting. Present: W. H. Evans, J. W. Manier, R. F. Adams, Sam'l Cowan, and W. T. Glasgow.

There being no business before the board, it adjourned until the regular meeting in January, 1879.

At a called meeting February 20th, 1879, of the stockholders and directors, called for the purpose of discussing and determining the best mode of settling the indebtedness of the company. Present: The following directors and stockholders: W. H. Evans, J. W. Manier, Sam'l Cowan, R. F. Adams, W. T. Glasgow, W. H. Bunch, A.
77 Tyler, and J. H. Criddle. On motion of R. F. Adams, the secretary and treasurer was instructed to turn over the coal

bills and reimbruse Dr. W. H. Bunch and W. H. Evans for money advanced by them to pay freight bills. Whatever deficit there is after the bills have been collected is to be paid them out of other available assets of the company.

W. T. GLASGOW, *Sec'y.*

At a called meeting March 19th, 1879, of the stockholders for the purpose of devising some way to liquidate the debts of the company, the following stockholders present: W. H. Evans, J. W. Manier, Sam'l Cowan, W. H. Bunch, representing Bunch & Glasgow; J. H. Criddle, A. L. Blackman, R. F. Adams. On motion of Mr. Sam'l Cowan, Mr. R. F. Adams was called to the chair. On motion of Mr. Sam'l Cowan, it was moved and seconded that a committee be appointed to confer with parties in regard to the sale of the mines. The chair appointed the following committee: J. W. Manier and W. T. Glasgow. On motion of Mr. W. H. Evans, Mr. R. F. Adams was added to the committee. It was moved and seconded that the minutes be approved. On motion of Mr. Evans, the meeting adjourned.

R. F. ADAMS, *Chairman.*

W. T. GLASGOW, *Sec'y.*

At a called meeting of the stockholders April 5th, 1879, called for the purpose of determining how to proceed to protect the interest of the company from loss by sale of land under vendor's lien—said land was purchased by A. L. Blackman of George Croft and Mary A. Croft, and was transferred by A. L. Blackman to the company, for which he received stock—the following stockholders present: J. W. Manier, Sam'l Cowan, R. F. Adams, W. H. Bunch, repre-
78 senting the stock of Bunch and Glasgow; Buford & Warner, Evans, Fite and Porter, and A. L. Blackman. The meeting was called to order, and J. W. Manier was chosen chairman. After explanation of the object of the meeting the matter was fully discussed, and, on motion of T. D. Fite, the vote was taken as to whether or not the company was able to protect itself against the sale. It was unanimously voted that the company is unable to protect itself. There being no further business before the meeting, it was moved and seconded that it adjourn.

J. W. MANIER, *Chairman.*

W. T. GLASGOW, *Sec'y.*

At a called meeting of the directors April 8th, 1879, the following directors present: R. F. Adams, Sam'l Cowan, J. W. Manier, and W. T. Glasgow. The meeting was cal-ed to order and Mr. R. F. Adams was chosen chairman, the president being absent. The meeting was called for the purpose of making some disposition of the mines, the right of way to the Southeast railroad having been sold by the sheriff by vendor of the land April 7th, 1879. After discussion of the matter, Samuel Cowan moved that a committee be appointed, consisting of the president and secretary, to receive bids for a sale or lease of the property; said bids, if any, subject to

acceptance or rejection of stockholders at a meeting to be called April 10th, 1879. The chair appointed W. H. Evans president and W. T. Glasgow sec'y to receive said bids. There being no further business before the meeting, the meeting adjourned to meet April 10th, 1879.

NASHVILLE, TENNESSEE, *December 9th*, 1885.

At a called meeting of the directors of the Empire Coal and Transportation Company, called for the purpose of electing a director and a president to fill the vacancy caused by the death — W. H. Evans, the following directors present: Sam'l Cowan,
79 R. F. Adams, and W. T. Glasgow. R. F. Adams called to the chair. On motion of Sam'l Cowan, A. L. Blackman, of New York, was nominated for a director to fill the vacancy caused by the death of W. H. Evans. The vote was taken and the following directors voting unanimously for A. L. Blackman as director: Sam'l Cowan, W. T. Glasgow, and R. F. Adams. It was moved that A. L. Blackman, of New York, be elected president and general manager; which motion was unanimously adopted. There being no further business, the board adjourned *sine die*.

R. F. ADAMS, *Chairman*.

W. T. GLASGOW, *Sec'y*.

EXHIBIT "L."

For and in consideration of the sum of five dollars to it in hand paid, the receipt of which is hereby acknowledged, and for other considerations hereinatter mentioned, the Empire Coal and Transportation Company has this day bargained and sold, and does hereby give, grant, alien, and convey, to W. T. Glasgow, his heirs and assigns forever, all the property conveyed to said company by A. L. Blackman and J. H. Criddle by deed dated April 5th, 1878, and received in the office of the county court of Christian county, Kentucky; which said property is in deed specified as follows: 1st, the interest acquired by A. L. Blackman by a lease to him, dated July 5th, 1877, from Mary Ann Brasher and others, as the heirs-at-law of A. H. Brasher, registered in said county in Deed Book No. 55, at page 118; 2, the interest acquired by said Blackman by a lease from Larkin C. Croft and wife, registered in said county in Deed Book No. 55,
80 and at page 196; 3, the interest acquired by said Blackman by a lease from A. H. Brasher and wife, dated May 24th, 1877, and registered in said Deed Book No. 55 at page 190; 4, the interest ac-uired by said Blackman by a lease from J. W. Long and wife, registered in said Deed Book No. 55 at page 315; 5, the interest acquired by said Blackman by lease from Mary Croft and George Croft, registered in said Book No. 55 at page 515; 6, the interest acquired by said Blackman by lease from Joseph Cordier and wife, dated August 10th, 1877, and registered in said Book No. 55 at page 192; 7, the interest acquired by said Blackman by a lease from A. H. Brahser and wife, dated May 24th, 1877, and recorded in Book No. — at page —; 8, also the interest acquired by said J.

H. Criddle by deed from said Blackman, registered in said Book No. 55 at page 515; 9, the interest acquired by said Criddle by a deed from said Blackman, dated September 6th, 1877, and recorded in said Book No. 55 at page —, and for a particular description of the property hereby intended to be conveyed and the interest in the same hereby intended to be conveyed special reference is made to said deeds above specified: To have and to hold the same to him, the said W. T. Glasgow, his heirs, and assigns forever, with all the hereditaments, rights, and privileges thereunto in anywise pertaining for the uses and trusts hereinafter specified. The said Empire Coal and Transportation Company hereby covenants with the said W. T. Glasgow that it is lawfully seized and possessed of the property specified in said deed, in the manner and form set forth in said deed, and has a right to convey the interest therein set forth, and that the same is not encumbered by any act of said company, and that said company will warrant and defend the title to said property, as set forth in said deed against the claims of all persons
81 claiming by or through said Blackman and said Criddle or either of them, as well as by or through said company; and said Empire Coal and Transportation Company hath this day bargained and sold and does hereby give, grant, alien, and transfer to the said W. T. Glasgow and his assigns forever all of its bills, notes, book accounts, and choses in action of every description; also its mining tools, implements, iron rails, spikes, tramways, blacksmith tools, merchandise, and all and every description of personal property which said company may own. The intent of said company is to convey to said Glasgow everything of value which it may possess in the shape of property, real, personal, or mixed; but the whole of said property is to be held by the said Glasgow for the following uses and upon the following trusts and none other—that is to say, the Empire Coal and Transportation Company, an unincorporated partnership, whose members were the original corporators of the said Empire Coal and Transportation Company, is indebted to various persons, a list of whom, with the amounts believed to be due, is contained in Schedule No. 1, hereto attached and made a part of this deed and the Empire Coal and Transportation Company has, for value received, assumed payment of all debts of said partnership. The Empire Coal and Transportation Company is itself indebted to sundry persons, a list of whom with the amounts believed to be due them is contained in Schedule No. 2, hereto attached and made a part of this deed; but, if there should be any creditors, either of said partnership or of said company not mentioned in said sc-edule, he is to have the benefit of the provisions of this deed as fully as if he had been mentioned therein by name, and if any of the claims specified in said schedule have been paid in whole or in part or if said company is entitled to any credits or set-
82 off, the said Glasgow shall have full power to share and claim the benefit of the same, notwithstanding the amounts specified in said schedule. Now the said Empire Coal and Transportation Company is anxious to secure and pay as speedily as possible each and every one of said claims and to subject its prop-

erty to the payment of the same as speedily as may be done consistently with the best interests of said creditors, and to accomplish these ends this conveyance is made. It shall be the duty of said Glasgow immediately upon the execution of this deed and the giving of such bond, if any, as may be required by the laws of Kentucky, to take immediate possession of all of said property. The property hereby conveyed is mining property, held upon condition of mining not less than a certain specified quantity of coal per annum and the payment of the owners of the fee of a certain annual royalty upon the amount named. Among the debts in Schedule No. 2 is an amount of some six hundred dollars, more or less, for royalty due and unpaid, and if the same should not be speedily paid, the leases above named will be forfeited. To preserve said leases, therefore, to the company and its creditors said Glasgow is directed, out of the first money that may come into his hands, after reimbursing himself for the expenses of this deed, including the reasonable fees of counsel, to pay in full the amount due as royalty as aforesaid; and, further, to prevent a forfeiture the said Glasgow is directed, until such time as a sale may be made as hereinafter provided, to continue mining and selling coal and to make all contracts necessary or proper in carrying on the business and that may be fully executed on or before the first day of May, 1879; and if the said Glasgow shall ascertain that in order to procure the labor of the miners it is, in his opinion, necessary to pay them in
83 full the wages already accrued and unpaid he may, if in his judgment it is best for all concerned, and by and with the consent of two-thirds in number and value of all the creditors, pay such miners in full. The said Glasgow shall have the power to employ and pay reasonable wages and salaries to all persons necessary to carry on the business and comply with contracts made heretofore or what shall be hereafter made by him within the limits above suggested for the sale and delivery of coal. Out of the proceeds of the sale of coal, after the payment of all expenses, including counsel fees, if any, for advice as to the management of the trust and his own compensation—say, one hundred and twenty-five dollars per month—the said Glasgow shall pay the specified royalty to the owners of the fee and the remainder he shall pay *pro rata* upon all the debts specified in Schedules Nos. 1 and 2 and on any other debts of said partnership or incorporated company, if any, not contained in said schedule; and if the debts should not be paid in full on or before the first day of May, 1879, then and in that event said Glasgow may, at the request in writing of any one of said creditors, proceed to sell the whole of said property at public sale and free from the equity of redemption, which right of redemption, if by the laws of Kentucky it would exist in such case, is hereby expressly waived, but before said sale shall be made the said Glasgow shall give thirty days' notice of the time and place of the same in some newspaper published in Hopkinsville and Louisville, Kentucky, and in Nashville and Memphis, Tennessee; said sale may either be made for cash or upon such reasonable credit as upon consultation with the principal creditors said Glasgow may deem

best for all concerned; and after the payment of all
84 expenses, including all expenses of sale, counsel fees, compensation for himself and royalties, etc., the said Glasgow shall pay *pro rata* the debts of the said partnership and said company, as herein specified; and, if after paying the same with interest in full, any balance should remain in his hands, the same shall be paid by him to the treasurer of said company for the time being; but, if by or before said first day of May, 1879, said debts shall have been paid in full, then and in that event the trust in said Glasgow hereby created shall terminate and cease, and said Glasgow shall, upon the payment of his expenses, compensation, and all sums for which, under this deed, he may have subjected himself to personal liability, reconvey by suitable deed at the expense of said company, the property hereby conveyed to him. This deed is made in pursuance of a resolution of the stockholders in convention assembled August the 19th, 1878. There being no corporate seal of said Empire Coal and Transportation Company — has caused this deed to be signed in its name and by its president and secretary.

EMPIRE COAL AND TRANSPORTATION COMPANY,
By J. P. HELMS, *President Pro Tem.* [SEAL.]
J. H. CRIDDLE, *Secretary and Treasurer.* [SEAL.]

Accepted.
W. T. GLASGOW.

STATE OF TENNESSEE, }
Davidson County. }

I, James T. Bell, clerk of the county court of said county, in said State, do certify that this instruiment in writing from J. P. Helms, president, and J. H. Criddle, secretary and treasurer, Empire Coal and Transportation Company, was this day produced to me by them and acknowledged by the said Helms, president, and J. H. Criddle, sec'y and treas., to be their act and deed and who consented
85 that the same might be recorded.

Given under my hand and seal this 10th day of Aug., [SEAL.] 1878.

JAMES T. BELL, *Clerk.*

(The two schedules are omitted in this copy.)

STATE OF KENTUCKY, }
Christian County, } *ss:*

I, John W. Breathitt, clerk of the county court for the State and county aforesaid, do certify that the foregoing deed from the Empire Coal and Transportation Company to W. T. Glasgow, with the two schedules thereto attached, was this day produced to me in my office, certified above *as above*, for record; whereupon said deed was lodged for record and was, with this and the foregoing certificate, duly recorded in my office.

Given under my hand this 12th day of August, 1878.

JOHN W. BREATHITT, *Clerk.*

Recorded in Deed Book No. 56, at pages 244, 245, 246, 247, 248, and 249.

Report.

In the Matter of the Empire Coal and Transportation Company.

The undersigned assignee begs to report that, under power conferred in the deed of trust herein and after advertising, as required in said deed, in the following newspapers, viz., the Kentucky New Era, at Hopkinsville, Ky.; the Courier Journal, at Louisville, Ky.; the Nashville Banner, at Nashville, Tenn., and the Memphis Appeal, at Memphis, Tenn., he proceeded, on Monday, the second day of June, 1879, at the court-house door, in the city of Hopkinsville, Ky., to sell at public auction, for cash in hand, the unexpired lease of said company or term of years in and to the two-hundred-acre tract of land described in the lease from the heirs of A. H. Brasher, dec'd, to A. L. Blackman, and referred to in said deed, together with the fixtures, railroad, mining cars, mules, wagons, carts, and
86 other personal property as set forth in the invoice hereto attached, and James A. Manier, of Nashville, Tennessee, being the highest and best bidder for all of said property, the same was stricken off and sold to him at the price of fourteen hundred dollars.

Respectfully reported.

W. T. GLASGOW, *Trustee.*

STATE OF KENTUCKY, }
Christian County. }

July Term, 1879.

The foregoing report of W. T. Glasgow, trustee of the Empire Coal and Transportation Company, was this day returned to the court, filed, examined, and approved by the court and ordered to record; whereupon the same hath been fully duly recorded in my office.

Given under my hand July, 1879.

JOHN W. BREATHITT, *Clerk.*

Recorded in Inventory and Appr. Book 2, pages 177, 178.

Trustee's bond recorded in county court clerk's office of Christian county, State of Kentucky.

Signed and acknowledged this 17th day of April, 1879.

W. T. GLASGOW.
THOS. H. WILLIAMS,
EDWARD WILLIAMS,
By W. T. GLASGOW,
Attorney-in-Fact.

Attested by—
JOHN W. BREATHITT, *Clerk.*

EXHIBIT "M."

We, the undersigned creditors of the Empire Coal and Transportation Company of Kentucky, have and do hereby, agree to accept the stock of that company at seven and one-half cents of the dollar of face value thereof for our respective debts against said company. The said company having been incorporated by the legislature of the State of Kentucky on the 2nd day of April, 1878, duly
87 organized and stock issued to the amount of $200,000 (two hundred thousand dollars). Of this sum A. L. Blackman is to have and retain the sum of $12,767.33 face value as his full share of stock of this company; and J. H. Criddle is to have and retain the sum of $19,273.33 face value as his full share of stock of this company; and all the balance of the stock of said company they are to transfer and assign to the creditors, as aforesaid, in payment of their said debts against this company. This being a matter of compromise to prevent a sale and sacrifice of the stock rights and franchises of this company. But, should A. L. Blackman, at any time between this date and the 1st of January, 1879, pay to all the creditors the amount of their respective debts against this company with interest and any other sum, or sums, they, or any of them, may advance or pay, before that time, or at that time, for the operation and promotion of said company and its business and the interest thereon, then they and each of them bind themselves unto said Blackman, his heirs and assigns, to surrender, return and assign unto him, his order, heirs or assigns, the amount of stock so received by each of them under this contract; should he fail to do this, then the stock shall be and remain the stock of the purchasers, forever free from rights and claims of said A. L. Blackman, his heirs or assigns. And, a meeting of the stockholders may be called at any time, and a new election held for officers. The amount of the respective debts against the company, now appearing upon the minutes of the company and the amount of stock aforesaid under this contract appearing upon the stock books of the company and any stock remaining unappropriated to the parties, in the manner aforesaid, shall belong to the stockholders, *pro rata*, and may
88 be disposed of after the 1st of January, 1879, as they may deem best, or sooner, if necessary to successfully operate said company. Given under our hands and private seals at Nashville, Tennessee, September 13th, 1878.

A. L. BLACKMAN, [SEAL.]
By J. P. HELMS, *Att'y-in-Fact.* [SEAL.]
J. H. CRIDDLE. [SEAL.]
J. P. HELMS. [SEAL.]
WARREN BROS. [SEAL.]
BUNCH & GLASGOW, [SEAL.]
By W. H. BUNCH.

On condition that balance of $232.76 be taken in iron or goods in my line.

R. F. ADAMS & CO. [SEAL.]

A. TYLER & CO. [SEAL.]
COWAN & CO. [SEAL.]
SAM'L COWAN.
PIGUE, MANIER & CO. [SEAL.]
J. W. MANIER.
EVANS, FITE & PORTER. [SEAL.]
W. H. EVANS.

Witness to copy:
W. H. BUNCH.

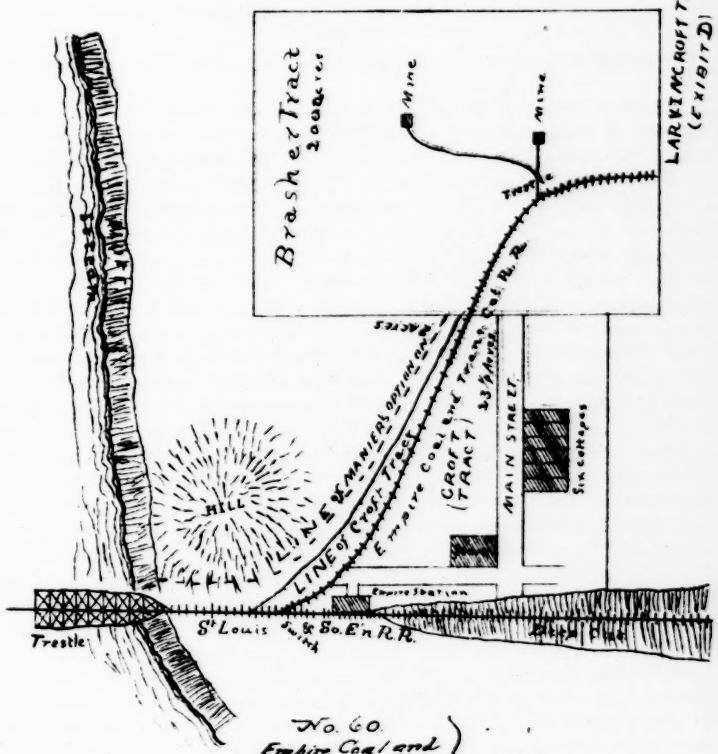
Witness to copy:
J. R. LOVE.

89 EXHIBIT "N."

Desired as stockholders.	Original am't of claim.	Am't advanced.	Total claim.	Am't to be paid.	Total am't to be taken in capital stock at 7½ cts. to dollar.
1. Adams & Co., R. F.	242 62	24 62	267 24	232 76	500
2. Anderson & Coch	165 93	10 60	116 53	33 47	150
3. Buford & Warner	93 38		93 38	106 62	200
4. Bunch & Glasgow	1,204 79	1,479 44	2,684 23	315 77	3,000
5. Blackman, A. L.	957 54		957 54	42 46	1,000
6. Cowan & Co.	725 12	750	797 62	202 38	1,000
7. Criddle, J. H.	1,445 48		1,445 48	54 52	1,500
8. Clark, Jack	700 00		700 00		700
9. Evans, Fite & Porter	698 02	69 80	767 82	232 18	1,000
10. Fishel & Bro.	315 25	31 52	346 77	153 23	500
11. Goodbar, White & Co.	205 66		205 66	94 34	300
12. Helms, J. P.	250 00		250 00		250
13. Landes & Clark	50 00		50 00		50
14. Phillips & Buttorf	325 80	32 58	358 38	141 62	500
15. Pigue, Manier & Co.	407 80	41 30	449 10	550 90	1,000
16. Radford & Co.	2,414 66		2,414 66	585 34	3,000
17. Woolwine, Bryan & Reese	131 45		131 45	68 55	200
18. Warren Bros.	123 60	12 36	135 96	14 04	150
Totals	10,397 10	1,774 72	12,171 82	2,828 18	15,000 00

(Here follows diagram marked p. 90.)

EXHIBIT "D."



No. 60.
Empire Coal and Transportation Co. of Empire Coal and Mining Co. et al.

p. 90.

A.A. Dodd

91 EXHIBIT "P."

Christian County Circuit Court.

MARY ANN BRASHER, BENJAMIN ROBINSON and A. J. ROBINSON, His Wife; Joseph Cordier and Serena Cordier, His Wife, and Albert Brasher, Plaintiffs,

against

THE EMPIRE COAL AND TRANSPORTATION COMPANY, Defendants.

The plaintiffs, Mary Ann Brasher, B. Robinson and wife, A. J. Robinson; Joseph Cordier and wife, Serena Cordier, and Albert H. Brasher, state that they are the owners of a tract of about 200 acres of land, particularly described in the contract of lease herewith filed and hereinafter more particularly referred to. Said land descended to A. J. Robinson, Serena A. Cordier, and A. H. Brasher from their father, Aquilla Brasher, dec., who departed this life leaving plaintiff Mary Ann Brasher surviving him as his widow and who has a dower interest in said land, which has never been set apart or assigned to her, and the said A. J. Robinson and Serena A. Cordier having respectively intermarried with the coplaintiffs, Benjamin Robinson and Joseph Cordier. The plaintiffs say that the said lands have several tenement-houses, with about 80 acres of land cleared, well fenced, and in a good state of cultivation, and that it was good farming land, valuable for agricultural purposes, with a yearly rental of about $200, but said lands were more especially valuable on account of an underlying coal measure of superior quality for fuel and of great excellence for manufacturing purposes; that, on account of the superior quality of said coal and the ready sale at an advanced price over competing coals in markets where it was known, plaintiffs were desirous of having the same successfully mined and placed upon the market of the South and West, with which there was easy connection over the St. Louis & South-
92 eastern railway, which was near said coal measures. They had not the necessary capital themselves to open and operate a mine in said coal measures on a scale of sufficient magnitude to make it profitable. They state that one A. L. Blackman, representing himself to these plaintiffs that he was a man of means and that he could control capital largely more than necessary to develop and successfully operate said mine or mines in the said coal measures, induced them by said representations to enter into a contract of lease with *them* on the fifth day of July, 1887, for the term of fifty years from the 22nd day of May, 1887, by which these plaintiffs leased the said Blackman the exclusive mining privileges of the said coal measures unreservedly in their said land, being in Christian county, Kentucky, and described as follows: It is bounded on the south by the land of W. G. Croft, on the west by the lands of John Davis and D. M. Wooldridge, on the east by the lands of Albert Brasher, on the north by the land of L. C. Croft, and which tract of land is said to contain two hundred acres, more or less, with

the right to mine and ship coal therefrom, subject, however, to the limitations and conditions imposed in said contract of lease, a copy of which is filed herewith, marked "A," and the original being of record in the Christian county court clerk's office. It will be seen from reference to said contract of lease that the said Blackman was to pay plaintiff a royalty of ten cents on each ton of lump coal and three cents on each ton of nut coal mined and shipped under said contract, which said royalty was to be paid monthly in instalments, the books of said Blackman to be open for inspection of these plaintiffs; that the mining operations were to be conducted with as little injury as possible to the lands of plaintiffs, and the mining operations were to be continued in good faith
93 after the opening of said mines, and after they had been opened for one year these plaintiffs were to receive a mining of eight hundred dollars per annum, and upon the failure to pay which the said lease, with all its rights and privileges, was to be forfeited, and to further secure the payment of said royalty a superior lien is given to said plaintiffs under said contract on the fixtures and improvements to be placed on said land under the lease, and in the event the said lease should be vacated it was stipulated that the mines should be left in good running order, and, further, that the mining operations should be conducted in good mining-like manner. They say that after the execution of said lease, viz., on the 6th day of September, 1877, said Blackman, by deed recorded in Christian county court clerk's office, in Deed Book 55, page 187, transferred an interest of one-third in said lease to one J. H. Criddle for the nominal sum of $4,500, but not over $600 of which was ever paid. The said Blackman and Criddle went upon said land for the purpose of opening said mines, and in violation of said contract and the rights of these plaintiffs they threw down the fencing around the said farm and greatly injured the same by cutting it up with unnecessary roads and cutting down and destroying the timber thereon, and for purposes not required by their mining operations; that neither the said Blackman nor Criddle had any means with which to open and operate said mines; that they were adventurers, speculating upon the credulity of these plaintiffs and such operators as they could induce to labor for them by promises to pay; that said Blackman undertook to superintend the opening of said mines, and that as such superintendent he had neither skill
94 nor ability; that a large part of the work done in erecting improvements and opening said mines added nothing to the value of the property, and that the mines were so unskilfully opened as to require the constant labor of at least two hands to prevent overflow from water. They say that said Blackman and Criddle, being unable on account of impecuniosity to operate said mines, and having exhausted their individual credit, obtained from the General Assembly of this Commonwealth an act—see act April 2nd, 1878—by which the said Blackman and Criddle, J. P. Helms, W. H. Bunch, and W. T. Glasgow were created a body corporate under the name of the Empire Coal and Transportation Company, with the object of operating said mines; that the said Blackman and Crid-

dle as individuals transferred said lease to said company only of themselves and no other for a nominal consideration and then proceeded to organize said company by the election of said Blackman as president and the said Criddle as secretary and treasurer; but, failing by this means to obtain further credit and being largely indebted individually or otherwise to a number of persons in Nashville, Tennessee, where they resided, the said Blackman and Criddle resigned their several offices and transferred to the creditors, or a portion of them, their stock, or a greater part of it, in said company, and the said creditors, putting in their said debts against said Blackman and Criddle as capital stock with which to operate said mines, proceeded to elect Evans, of Nashville, Tennessee, president and W. T. Glasgow as secretary and treasurer. They say that the company did not have one cent of capital with which to operate said mines except the indebtedness aforesaid; that the only stock in said concern was the
95 lease which had been hypothecated as stock of said concern and apportioned to the said creditors in proportion to their said debts as aforesaid, and that this furnished the only capital of said company; that the said company thus organized, after a suspension of about six months, resumed operations in said mines on or about the September 1st, 1878, and mined and shipped coal and occupied the tenement-houses of plaintiffs on said land, as had been theretofore done by said Blackman and Criddle; that up to the 30th day of September, as shown by account rendered by said Glasgow as secretary and treasurer of said company and which is filed herewith as part hereof, there was due to these plaintiffs the sum of $75.83, which was paid by said Glasgow; that the royalty and rent for the month of October, as shown by said account, is $125.23; that defendants moved their office to Nashville, where they kept their books, and have failed and refused to render an account or statement to the plaintiffs for the months of November, December, January, and February. Plaintiffs say that the operations for said months were large and there was taken from said mines at least — tons of coal and — tons of nut coal, and that, as royalty thereon, there is due these plaintiffs at least the sum of $450, which, with the amount due for October as aforesaid and amounting altogether to $575.35, is now due to these plaintiffs and remains wholly unpaid. Plaintiffs allege and charge that the mining operations have not, since the opening of said mines, been carried on in good faith. They reiterate that Blackman and Criddle were impecunious adventurers, without the capital and capacity to operate the mines successfully and profitably, and they state and charge that the organization and operation by the present management is not done in good faith; that they have
96 now abandoned the mines altogether and having no one there but Jack Clark, who is the chief officer and agent of said defendants in Christian county and in fact in this State; that the stockholders and officers *being* residents of the State of Tennessee, and during the operations of said mines the said defendants, its officers and agents, destroyed and wore out much property left them by Blackman and Criddle and necessary in operating said mines and never replaced the same; that all the money received

for coal was applied to the extinguishment of debts held by the stockholders against Blackman and Criddle; that they have no capital with which to operate said mines, and that, by reason of their incapacity to properly conduct and successfully carry the same on, that the management of the St. Louis & Southeastern Railway Company have discriminated against them in freights per car-load to Nashville, Tennessee; that this is the only means of transportation of said coal; that with this discrimination the work of said mines would involve a loss corresponding with the magnitude of the operations. They say that when they entered into said contract it was in good faith upon their part and under the belief that said lease was to be faithfully carried out for the time and by the terms as therein agreed; that they would otherwise have been unwilling to have their said lands cut up with roads and the timber thereon cut and destroyed and the farm injured in value to the extent that such operations would necessarily involve; that the minimum that they expected to realize for the full term of the lease was the sum of — dollars, which sum they say there would be a reasonable expectation of if said mines were operated in good faith by defendants. They say that said Blackman and Criddle were largely indebted and each hopelessly insolvent, and that there are now three suits pending in this court in favor, respectively, of B. & Co., D. & Co., and C. & Co. against defendants, said Blackman and Criddle, asking for a sale of the property upon which the defendants' storehouse and miners'
97 houses are situated to enforce a mechanics' lien for the building of said houses and the payment of the purchase-money for the ground on which they are situated; that the defendant is making no effort to prevent said sale, and that it has no means to pay off said debts; that decrees for the sale thereof will be obtained at the present term of this court, and that, when executed, it will cut off from defendants their connection with the St. Louis & Southeastern railway, about 400 yards of their railroad being on said lands therein sought to be sold. They say, further, that the defendant procured the said Blackman and Criddle to make a pretended assignment on the -- ——, 1879, of their interest in said lease to one W. T. Glasgow, the now secretary and treasurer of said company, for the benefit of all their creditors, with a pretended power coupled therewith to the said Glasgow to make private sale thereof, subject to the conditions therein named, which said deed they had recorded in Deed Book No. —, page —, in Christian county court clerk's office, but which they say the said Glasgow never accepted and never executed any bond or qualified thereunder; they say that they are advised that other pretended transfers of said interests have been made to other parties, but of this they have no certain and definite knowledge. The plaintiffs state that their claim against the defendants is for money due them under said contract aforesaid; that their claim is just; that they believe they ought to recover thereon at least the sum of $575.23 as aforesaid. They say that they have a lien on the coal fixtures and improvements and other property of defendants for the payment of said sum. They say that defendants have attempted to have their said prop-

98 erty sold and conveyed with the fraudulent intent to hinder and delay its creditors; that said defendant is about to sell its property with such intent. They say that defendants have abandoned the work in said mines; that they are not operating the same in good faith; that they have abandoned the said contract of lease without the fault or consent of plaintiffs, and by reason thereof said lease has been vacated; that they did not have the mines in good mining condition, as stipulated in said contract; that unless this court cancel the said lease these plaintiffs will lose $40,000 aforesaid, as well as the use of said mines and lands for the said term of fifty years; that by reason of defendants' bad faith aforesaid and the destruction of their said farm and timber they have been damaged at least ten thousand dollars.

Wherefore plaintiffs pray for the said sum of five hundred and seventy-three dollars and twenty-three cents and for ten thousand dollars damage due as aforesaid; that their said lien be enforced and the said property of the said defendants be sold in satisfaction thereof; that the said lease be cancelled and the plaintiffs be placed in possession of said land, and for their costs and all proper and equitable relief.

LANDES & CLARK, *Solicitors.*

(Oath, etc., and signatures of plaintiffs.)

MARY ANN BRASHER *et al.*
vs.
EMPIRE COAL & TRANSPORTATION COM., *et al.*
} Final Decree. September 18th, 1879.

The defendants being duly summoned and failing to answer, the allegations of the petition are taken for confessed, and this cause being heard, and it appearing that the defendant is the assignee or vendee of A. L. Blackman under a contract of lease made with the plaintiffs on August 14th, 1877, by said Blackman for the
99 land upon which the Empire Coal and Transportation Company's lands are situated, and that under said contract of lease the mining operations were to be carried on in good faith, and after the expiration of twelve months from the opening of said mines a minimum royalty of $800 per annum was to be paid to plaintiffs, and upon the failure of either condition the said contract of lease was to be forfeited and become void; and it being the opinion of the court that the defendant has utterly failed to comply with either of said conditions, and that the defendant is hopelessly insolvent and unable further to operate said mines under said lease and has made an assignment of all its interest and effects for the benefit of creditors and has abandoned the said contract of lease; and it further appearing to the court by *profert in curia* that J. W. Manier, of Nashville, Tennessee, became the purchaser of the unexpired term of defendant at the sale made by its trustee under said assignment, and that he has since the date of said purchase become also the owner by purchase from plaintiffs of their reversionary interest in the lands mentioned and embraced in said con-

tract of lease, it is now, therefore, ordered and adjudged by the court that the said contract of lease be cancelled and held for naught. The same is hereby adjudged to have been forfeited and become void, and the said Manier is remanded to his title derived under his deed of conveyance from plaintiffs.

And the foregoing bill and exhibits are endorsed: "Filed April 6th, 1886. Lewis T. Baxter, clerk, by Chas. Nash, D. C."

And the complainants in the foregoing bill entered into bond, with security for payment of costs, which is as follows, to wit:

EMPIRE COAL AND TRANSPORTATION COMPANY
vs.
100 EMPIRE COAL AND MINING COMPANY.

In the Circuit Court of the United States for the Middle District of Tennessee.

Know all men by these presents that we, the Empire Coal and Transportation Company, are held — firmly bound unto the Empire Coal and Mining Company in the penal sum of two hundred dollars; to the payment of which we bind ourselves and each of us and each and every of our several heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands on this the 6th day of April, 1886.

The condition of this bond is such that the said Empire Coal and Transportation Company has commenced suit against the Empire Coal and Mining Company for $—: Now, if the said Empire Coal and Transportation Company shall prosecute said suit with effect or, on failure thereof, pay and satisfy all costs that may be adjudged against said plaintiff in said cause or on failure of said defendant, if convicted, to pay and satisfy said costs, if the plaintiff shall pay the same, then this bond to be void; otherwise to remain in full force and virtue.

EMPIRE COAL & TRANSPORTATION COMPANY,
By HILL & GRANBURY, *Att'ys.*
HILL & GRANBURY, *Sureties.*

The foregoing bond is endorsed: "Filed the 6th day of April, 1886. Lewis T. Baxter, clerk, by Chas. Nash, D. C."

And thereupon a summons was issued out of said United States circuit clerk's office as follows, to wit:

The President of the United States of America to the marshal of the middle district of Tennessee, Greeting:

You are hereby commanded to summon the Empire Coal and Mining Company, a corporation regularly organized under
101 the *the* laws of the State of Kentucky, and whose principal office is in Nashville, Tennessee, and James W. Manier, James A. Pigue, Thomas D. Fite, William Porter, and Horton Fall

and James D. Richardson, as executors of the last will and testament of William H. Evans, deceased, all citizens of Davidson county, Tennessee, and William T. Glasgow, a citizen of the State of Maryland, if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit, for the middle district of Tennessee, at the Federal court-room at Nashville, in said State, on the third Monday in April next, then and there to answer the bill of complaint of the Empire Coal and Transportation Company, a corporation regularly organized under the laws of the State of Kentucky, and whose office is in —. Herein fail not and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the seventh day of April, in the year of our Lord eighteen hundred and eighty-six, and of the Independence of the United States the 110th year.

LEWIS T. BAXTER, *Clerk.*

The foregoing summons is endorsed: "Issued on the 7th day of April, 1886. Lewis T. Baxter, clerk."

And further endorsed: "Executed on James D. Richardson, April 9th, 1886; also on James W. Manier, as president of the company and as one of the company; also on James A. Pigue, April 12th, 1886; also on Horton Fall, April 13th, 1886, and W. T. Glasgow, April 15th, 1886, and delivered to all the above-named parties a copy of complainant's bill, and on James W. Manier, as president, and a copy as one of the company. Executed on the above
102 dates, except as to Thomas D. Fite, not found in *in* my district. G. N. Tillman, U. S. marshal, by W. T. Wright, D. M."

A demurrer was filed in this cause as follows:

Circuit Court of the United States for the Middle Distrcict of Tennessee, Sitting in Equity.

EMPIRE COAL AND TRANSPORTATION COMPANY
vs.
EMPIRE COAL AND MINING COMPANY *et al.*

The demurrer of James W. Manier, James A. Pigue, Thomas D. Fite, William Porter, J. H. Fall, called in the bill Horton Fall, and James D. Richardson, the last two being the administrators of the estate of W. H. Evans, deceased, but erroniously styled in the bill executors.

These defendants, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint to be true in manner and form as the same are therein set forth and alleged, do demur to said bill, and for cause of demurrer show that the plaintiff shows in its said bill that the plaintiff is a corporation incorporated by an act of the legislature of the State of Kentucky and is a citizen of that State; and the plaintiff further shows in said bill

that The Empire Coal and Mining Company, one of the defendants in said bill, is a corporation inco-porated by an act of the legislature of said State of Kentucky and is a citizen of said State of Kentucky, and the plaintiff, in its said bill, shows no ground of jurisdiction in this court, except the citizenship of the parties. Inasmuch, therefore, as the plaintiff shows on the face of its bill that one of the defendants is a citizen of the same State of which the plaintiff is a citizen, and no ground of jurisdiction is alleged except citizenship of the parties, these defendants allege that this court cannot
103 take jurisdiction of this case.

Whereupon these defendants do demur to said bill and demand the judgment of this court whether they shall be compelled to make any further or other answer to said bill, and they pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

DEMOSS & MALONE, *Sol'rs.*

Thos. H. Malone, one of the counsel for the above-named defendants, certifies that, in his opinion, the foregoing demurrer is well taken in point of law.

THOS. H. MALONE,
Of Counsel for Def'ts.

James H. Manier, one of the above-named defendants, makes oath that the foregoing demurrer is not interposed for delay.

J. W. MANIER.

Sworn and subscribed before me June 2, 1886.

CHAS. NASH, *D. C.*

An amended bill was filed by the complainant as follows, to wit:

To the judges of the circuit court of the United States for the middle district of Tennessee:

Complainant, The Empire Coal and Transportation Company, a corporation duly organized under the laws of the State of Kentucky, states that heretofore it filed its original bill in this court, charging, in substance, as follows:

That it was organized in April, 1878, and was the owner of coal mines and mining privileges and a mercantile business and other property to the amount of $100,000 or more, located in Christian county, Kentucky; that its president, A. L. Blackman, who owned two-thirds of its capital stock of $200,000, was compelled to
104 go to Europe in 1878, and that prior to his departure he perfected arrangements whereby the complainant would have funds to continue mining operations; that after his departure these arrangements were disregarded and the complainant, owing to negligence and mismanagement, became indebted to the amount of about $12,000; that about August 1st, 1878, a scheme was formed by one Criddle, who was secretary and treasurer of the complainant, and Helms, who was also a director and president of the complainant,

and other then unknown parties who were creditors of complainant, to get possession of complainant's capital stock and thereby get possession of its properties; that in pursuance of this scheme and on the 12th day of August, 1878, a pretended meeting of the stockholders of complainant was held and attempted to *and* execute a deed of trust of all complainant's property to one Glasgow, trustee, to secure said creditors of complainant; that this trust deed was void because of non-compliance of said trustee with the laws in such cases made and provided (as more fully appears in original bill, pp. 17 and 18); that after said trust deed was executed the former scheme to obtain complainant's capital was modified and carried out (as appears in said original bill, pp. 20–22), so that said confederates did undertake to allot said stock to themselves and organize anew the offices of complainant, and that among said creditors were the defendants to the orignal bill, viz., James W. Manier, James A. Pigue, Thomas D. Fite, William Porter, and William H. Evans; that in this organization the defendants James W. Manier and William H. Evans were elected directors and the said Evans president of complainant; that immediately upon the election of said Evans and Manier, as above recited, they at once began to conduct the affairs of complainant in such manner as to redound to their personal interest, and such acts
105 were done in pursuance and in accordance with the scheme with their confederates entered into for the express purpose of obtaining possession of complainant's property, as appears in said original bill, pp. 24–27; that notwithstanding the gross mismanagement of complainant's business from September, 1878, to April, 1879, it constantly made money and improved in value; that shortly prior to January, 1879, certain parties held mechanics' liens upon certain of complainant's realty for sums not exceeding $1,000 and offered to adjust their debts in any way convenient to complainant; that all such proposals were refused by complainant's officers at the instance of the said Evans and Manier, and that suits were shortly afterwards instituted to collect such debts, and that complainant's officers allowed such suits to be prosecuted to final judgments and foreclosure without any defense; that in a few days after such judgments were obtained the said Evans, president, on his own responsibility ordered the mines closed and work discontinued; that in March, 1879, said lienor debtors obtained decrees to have a part of complainant's property sold on April 7th, 1879; that shortly prior to said sale said Manier and his co-conspirator, Thos. D. Fite, in pursuance of a further scheme formed for the purpose of obtaining complainant's property for themselves and said Pigue, Porter, and Evans and for the purpose of excluding from participation in complainant's properties their former co-conspirators in the schemes above recited, secretly visited the properties of complainant and inspected them with a view to buying them at the approaching sale and revealed said scheme to one Glasgow by proposing to buy in the property and dividing it among themselves in equal
106 seventh parts, to be allotted to the five conspirators above named and the said Glasgow and one W. H. Bunch; that

complainant was the owner of a large amount of personal property and could easily have paid said lien debts on part of its realty with a small proportion of its personalty, but that it was a part of said scheme to allow said real estate to be sold in order that said conspirators might obtain color of title not participated in by their original confederates; that the realty to be sold consisted of about twenty-three acres of land upon which was located complainant's railroad extending from its mines to the St. Louis & Southeastern railway, and that without the aid of this twenty-three-acre tract no connection with an outside railroad could be had and the mines were thereby to be rendered valueless for want of an outlet for its productions; that there was one other outlet from said mines over a strip of realty containing about two acres and adjacent to said twenty-three-acre tract, but that said Manier held an option on this said strip of land for a time extending beyond the said sale of the twenty-three-acre tract, clearly showing an intention of depriving complainant of the means of egress and ingress from its mines in the event of a sale of the twenty-three-acre tract on said 7th day of April, 1879; that the said tract of land to be sold had previously been laid out in lots, with houses erected on a number of them, and that a small portion of said lots would have sold for enough to have paid off all of said judgments and still have left an approach to and from said mines; that no action was taken or allowed by said officers and conspirators to have said property sold in lots, but allowed the entire tract to be sold as a whole and was bid in at said sale by the said Manier, who was a director of complainant, for the sum of nineteen hundred dollars, when in fact the actual value
106½ of said property was more than $12,000; that after said sale said Manier openly boasted that he held the key to the situation and could compel a sale of the remainder of complainant's property to him at his own price; that upon the 8th day of April, 1879, the day after the said sale, the said Manier and his confederates procured a meeting of complainant's directors to be held for the purpose of making some disposition of the remaining properties of complainant, the right of way from the mines to the St. Louis & Southeastern railway having been sold the day previous, as appears from the minutes of said meeting at that date; that complainant was the owner of certain valuable mining privileges in adjacent tracts under certain leases, and that by the gross negligence and conspiracy of said Manier and his confederates these rights were greatly imperilled and have since been purchased by said Manier and his confederates; that about April 17th, 1879, the said Glasgow, at the instigation of said Manier, Evans, and their co-conspirators, pretended to claim and assert title to the remaining properties of the complainant under said old trust deed, and after certain void preliminary steps said pretended trustee sold at public auction all said properties to the said Manier for the sum of fourteen hundred dollars, although, in fact, a purchaser was present ready and willing to bid upwards of ten thousand dollars for said property, but was prevented therefrom by the said Manier and his confederates; that said sale was fraudulent and illegal and made for the purpose of

giving colorable title to the said Manier and his confederates; that shortly after this sale the said Manier and his confederates, viz., Evans, Fite, Porter, and Pigue, resumed mining operations on said properties under the name and style of J. W. Manier, and
107 that said conspirators, continuing to operate said mines and run such mercantile business as above recited, realized large profits therefrom and could have reasonably made much larger profits with proper care and attention to said business; that said Manier and confederates, in further pursuance of said scheme, about March, 1879, procured the lessors of certain mining lands of complainant to file their bills to declare forfeitures of all — complainant's leases, when, in fact, no such suit could have been instituted until a much later date according to the terms and conditions of said leases, and that before a final determination the said Manier purchased the fee in said leasehold estates for himself and confederates; that shortly thereafter the said Manier, who was at all times mentioned in said original bill as a citizen of Nashville, Tennessee, in further pursuance of said schemes, associated with himself his said confederates, Thos. D. Fite, William Porter, James A. Pigue, and W. H. Evans, likewise citizens of Nashville, Tennessee, at all times referred to in said original bill, and attempted to procure a charter from the State of Kentucky under the name and style of the Empire Coal Mining Company, and pretended to organize said pretended corporation with said parties as directors and owners of all the capital stock of one hundred thousand dollars, which they held and owned and have at all times since held and owned; that upon the said pretended organization the said Manier pretended to transfer to said pretended corporation all said properties, real, personal, and mixed; that said conspirators, acting under the name of the Empire Coal and Mining Company, have continued to operate said mines and run said mercantile business, and have realized large profits therefrom and could have realized much larger profits with proper care and diligence, and have caused great dam-
108 age and waste by their negligence and improper care of *of* said property and business, and, realizing the many imperfections of their titles to said properties, have operated and run said mines and mercantile business with a view of realizing as large profits in as short a time as possible, for all of which said conspirators are liable individually and personally to said complainant and to which they are liable to account and should be made to account to complainant; that they have realized fully $20,000 from said mines and mercantile business for all the years for which said conspirators, viz., James W. Manier, James A. Pigue, William Porter, Thos. D. Fite, &c., are personally and individually liable and should be made to account for the same individually and personally, and that the use and occupation was reasonably worth more than twenty thousand dol-ars per annum, all of which said conspirators and defendants have received and appropriated to their own use and are personally liable and individually and should be made to account to complainant for all said sums of money, and that they are still using and occupying said mines and business and appro-

priating the profits to themselves individually and personally and liable to account and should be made to account to complainants for the same.

Complainant prays in said original bill that said James W. Manier, Thos. D. Fite, William Porter, James A. Pigue, and Horton Fall and James D. Richardson, who are the executors of said William H. Evans, deceased, all citizens of Davidson county, be made defendants, &c., and for other appropriate and general relief under the charges and allegations of said bill.

Complainant here refers to said original bill, its prayer and exhibits thereto, and makes the same a part hereof, as if set out herein *in hæc verba*. Said bill seeks to make defendants, viz., Manier,
109 Fite, Porter, Pigue, &c., citizens of Davidson county, personally and individually account for the rents and profits realized by them or that should have been realized by them out of said properties, or to account for the reasonable profits received by them and appropriated individually and personally to their own use and benefit.

Complainant now states by way of amendment to said original bill that on the 12th day of January, in 1885, in furtherance of their conspiracy, as set out in said original bill, to swindle and defraud complainant and its stockholders of their properties, — undertook and pretended to execute a mortgage to one A. W. Harris, a citizen of Davidson county, Tennessee, upon all said property, real, personal, and mixed, including said mines, lands, railroad equipments and properties thereto belonging, for the purpose of securing $25,000 of bonds which said defendants had caused to be prepared and issued in the name of their creature, the Empire Coal and Mining Company, which said mortgage the said Manier and his co-conspirators caused to be executed in the name of said Empire Coal and Mining Company, by said J. W. Manier, president, and that Exhibit "R," here filed and made a part hereof (but need not be copied unless called for), is a certified copy of said pretended mortgage, executed in the manner aforesaid to said A. W. Harris as trustee, to whom the legal title to all said property is conveyed, as appears from said mortgage. Complainant states that it was not aware of this pretended mortgage when it filed its original bill in this cause — court, as hereinbefore stated.

It further states and charges upon information and belief that the $25,000 of bonds pretended to be issued and secured by said mortgage as aforesaid are held by said several defendant conspirators,
Manier, Fite, Porter, Pigue, &c., and that the pretended issu-
110 ance of said bonds and the pretended execution of said mortgage is but another fraudulent scheme and device resorted to by the said conspirators in furtherance of their fraudulent purpose of defrauding complainant and its stockholders of their rightful properties by pretending to mortgage the same to third parties without notice; all of which is but a fraudulent device of the defendants, resorted — for the fraudulent purpose aforesaid.

Complainant charges that A. W. Harris, the trustee in said mortgage and who now holds the legal title to all said properties, had

full notice, as complainant is informed and believes, of complainant's rights, titles, and equities as set out in the original bill, and that said Harris well knew that neither said conspiring defendants nor their creature and figure-head, the Empire Coal and Mining Company, under which name they seek to perpetuate their personal frauds and breaches of trust, had no title to said property and were merely holding the same in the manner stated by the original bill by force of their fraudulent tricks and schemes as therein set out.

Complainant therefore charges that said mortgage to Harris is void as against this complainant, and that the same is a cloud upon complainant's title, and Harris holds the legal title to the property merely in trust for complainant.

Complainant is advised and charges that if mistaken in the fact that A. W. Harris, the trustee in the mortgage, had notice of complainant's rights and equities in the said properties, as hereinbefore charged upon information and belief, still said mortgage would be void for the frauds aforesaid, the beneficiaries thereof being said conspirators, Manier, Fite, Porter, Pigue, &c., who are the holders and owners of the said bonds, as complainant is informed, believes, and charges.

Complainant is further advised and charges that if said
111 Manier, Fite, Porter, Pigue, etc., have sold and delivered any part of said bonds to any innocent persons (which is denied) they did so with the full knowledge of all the facts and for the fraudulent purpose *by* encumbering or attempting — encumber and convert complainant's properties to their own personal and private uses and in fraud of complainant and its rights; that they, the said Manier, Fite, Porter, Pigue, &c., thereby became personally and individually liable to this complainant to the amount in which they have wrongfully and fraudulently incumbered and converted its properties in the manner aforesaid and appropriated the proceeds to their own personal and private uses in fraud of complainants and its rights, and they should be made to account and pay to complainant the full amount of any such encumbrance they may have fixed upon complainant's property, as aforesaid, together with all interest, charges, and costs.

Complainant further states and charges that the Empire Coal and Mining Company is but the creature of said defendants, Manier, Fite, Porter, Pigue, etc., who own all its pretended stock, rights, and franchises, and it was brought into existence by them, as part of their fraudulent scheme hereinbefore set out, for the fraudulent purpose of cheating complainant out of its rights and properties and better enabling them to hide their own frauds and breaches of trust, and that all the large profits that have been realized during the operations of said mines, as set out in the original bill, have been pocketed and appropriated by said Manier and his co-conspirators, individually and personally, and that they are liable and should be made to account to complainant for the same and for the rents and use and occupation of said *the* properties; and complainant charges that the so-called Empire Coal and Mining Company

112 is insolvent and has nothing more than the mere nominal possession of this complainant's properties, as hereinbefore stated.

Premises considered, complainant prays that it be allowed to file this as an amended bill to the original bill filed in this cause on the 26th day of April, 1886, and that the said James W. Manier, Thos. D. Fite, James A. Pigue, William Porter, and Horton Fall and James D. Richardson, executors of W. H. Evans, deceased, and A. W. Harris, trustee, all citizens of Davidson county and within the jurisdiction of this court, and the said so-called Empire Coal and Mining Company, having its principal office and officers in Davidson county, Tennessee, and within the jurisdiction of this court, be made defendants and be served with process and be required to answer, but not under oath, which is expressly waived; and complainant prays as in its original bill and furthermore prays that said Manier, Fite, Porter, Pigue, &c., be held personally liable and accountable for the large rents and profits received and appropriated by them to their own uses in the *use* and profit operation of complainant's mines and properties, both when the same were being operated under the name and style of J. W. Manier and under the style of the Empire Coal and Mining Company (there being no difference in the operation of said mines in either case except in name), and that they be made to account for the reasonable rents and profits of the said mining properties and the said mercantile business and for the personal property which they took and converted of the value of many thousands of dollars, and that they be held to strict account, individually and personally, for the conversion of complainant's property by them in the manner set out in the original and amended bills, both as to its personal and real properties of value more than one hundred thousand dollars;

113 that they be held to a strict account for their breaches of trust and frauds; that the pretended conveyance of complainant's properties from Manier to the so-called Empire Coal and Mining Company be declared held in trust for complainant, and that said Empire Coal and Mining Company be declared to be invested with such title as it may have in trust for the complainant, etc.; that the mortgage, Exhibit "R," to defendant A. W. Harris, as trustee, be declared inoperative and void as to complainant, and that said Harris be declared invested with the legal title to said properties for the use and benefit of complainant, and the titles thereto be divested and be vested in complainant, or that if it should appear that the said Manier, Fite, Porter, Pigue, &c., have fixed a charge upon complainant's property for any part of the $25,000 of bonds pretended to be secured in said mortgage to said Harris that the said Manier, Pigue, Porter, Fite, etc., and Horton Fall and James D. Richardson, as executors of William H. Evans, deceased, be declared and held liable to this complainant for the amount of any such encumbrance they have so caused to be fixed upon complainant's properties and be made personally and individually to pay and discharge any such incumbrance, and that they be held individually and personally to a strict account to this complainant as trustee, etc. Complainant also prays that if it shall appear that,

for any cause, said Manier, Fite, Porter, Pigue, etc., have so conveyed, encumbered, and converted complainant's said properties, real as well as personal, and that the same cannot be recovered and cannot be reconveyed to complainant, that they be held liable and made to account and pay to complainant its full value, with all interest and costs, together with the large profits which they have realized therefrom. Let a receiver be appointed to take charge of the properties pending this litigation, etc., and for all other
114 or further relief as may to equity and good conscience belong.

HILL & GRANBURY,
Solicitors & Attorneys.

STATE OF TENNESSEE, }
Davidson County. }

Personally appeared before me the undersigned, William T. Glasgow, and in due form of law makes oath that he is secretary and treasurer of the complainant, The Empire Coal and Transportation Company, and that the matters and things stated in the foregoing amended bill as of his own knowledge are true, and those stated upon information and belief he believes to be true.

WM. T. GLASGOW,
Sec'y & Treas.

Subscribed and sworn to before me this 26th day of October, 1886.
L. T. BAXTER, *Clerk.*

EXHIBIT "R."

This indenture, made and entered into, this the 12th day of January, anno Domino, one thousand eight hundred and eighty-five, between the Empire Coal and Mining Company, a corporation organized, existing and operating under and by virtue of the statutes of the Commonwealth of Kentucky, the party of the first part and A. W. Harris, of the county of Davidson, in the State of Tennessee, as trustee, party of the second part, witnesseth:

Whereas the party of the first part desires to borrow money upon the series of bonds hereinafter mentioned for the payment of certain debts and charges against it and its property, for the extension of its business and for the development and betterment of its property and mines in Christian county, Kentucky, the said bonds to
115 be known as its first-mortgage bonds, to be fifty in number and numbered consecutively from No. 1 to No. 50, both inclusive and for five hundred dollars each, payable in lawful money of the United States and to become due and payable on the first day of April A. D. 1905 (with the privilege reserved to party of the first part to call and redeem any of said bonds at any time after the first day of April, 1890, upon full payment of the principal and all interest that shall have accrued upon the called bonds at the time of making such call), each of said bonds to be of even date herewith and to bear interest in the meantime at the rate of six per centum per annum, payable semi-annually, on the first day of April and October of each year and in accordance with the relative interest

coupons to be thereto annexed, both principal and interest of said bonds being made payable at the American National bank in the city of Nashville, Tennessee, and said bonds to become obligatory and binding only upon authentication by the signature of the said trustee and, whereas the party of the first part desires and intends to secure the payment of said bonds and coupons thereto annexed: Now, therefore, these presents witness that, in consideration of the premises and of one dollar to it in hand paid, the receipt whereof is hereby acknowledged, the party of the first part has granted, bargained, sold, conveyed, transferred, assigned and delivered and by these presents does grant, bargain, sell, convey, transfer, assign and deliver to the party of the second part as trustee and to his successors as trustee, all and singular, the corporate rights and franchises of the party of the first part and also all and singular the improvements and equipments of the party of the first part in and about and connected with its coal mines in Christian county, Kentucky
116 and, all and singular the right, title and interest of the party of the first part in and to the following lands and real property, together with all ways and rights of way in, to, over and upon the same, viz:

One certain tract, or tracts, or parcels of land in Christian county, Kentucky, situated on the waters of Castlebury Fork of Tradewater, formerly owned by James W. Manier, of Nashville, Tennessee and all by the said James W. Manier conveyed to the party of the first part by deed bearing date the 7th day of October, A. D. 1879, of record in the Christian county court clerk's office, in Deed Book No. 58 at page 92, and said lands bounded as follows: Beginning at a stone near a drain in John Davis' line, a corner established by William G. Croft and Aquilla H. Brasher in their lifetime; thence with said Davis' line north 10° east 24 poles to a stone, said Davis' corner to his coal-bank survey; thence with a line thereof north 18° east 44 poles to a post-oak stump, said Davis' corner established by himself and said Aquilla H. Brasher; thence with another of said Davis' line south 86° west 48 poles to a post oak, original corner of the Simon Lindle 310-acre survey and also original corner of the Davis' coal-bank survey, patented in the name of Phillip Hamby; thence with another of said Davis' line north 10° east, passing a small black oak, said Davis corner, at 95 poles, same course continued, in all 137 poles to a post oak, corner to the original survey of Simon Lindley, also corner of L. C. Croft's lands, this being the line marked in presence of Benjamin Farmer and William Thompson, as shown by title deeds; thence with a line of said L. C. Croft south 89° east 146 poles to a small hickory bush and dogwood, where a Spanish oak is called for in the title deed and not found, the same being an original corner of the aforesaid Simon Lindley survey; thence south 10° west 10 poles to a small
117 red-oak sapling, where a black oak is called for in the title deed and not found; thence south 69° east 72 poles to a stake or stone in G. W. Armstrong's line with a white oak and black oak marked as pointers; thence with said Armstrong's line south 10° west 44 poles to a stake, his corner, near the corner of his field and

corner to the tract sold by G. B. Croft to A. L. Blackman; thence with a line of said tract and said Armstrong's south 69° east 61 poles to a black oak, said Armstrong's corner; thence with another of his lines due east 20 poles to a stake or stone in said Armstrong's line (said stake stands 40 feet west of the centre of the track of the Henderson division of the Louisville & Nashville railroad); thence with said railroad, crossing the "Empire switch" at 54 poles, continuing with said railroad on the west side thereof to the end of the new culvert at the north end of the trestle; thence with the drain due west 12 poles to a gum with pointers; thence with a new line north 10° east 51 poles to two small dogwood bushes standing south 18 feet from the centre of the "Empire switch," G. B. Croft's corner; thence with said switch 18 feet from the centre thereof and following its curves 75¼ poles to a dogwood standing 18 feet south of said switch, said G. B. Croft's corner and in a line of the aforesaid Simon Lindley's survey thence with said line south 10° west 19 poles to a stone, the original beginning corner of the aforesaid Simon Lindley survey and also said G. B. Croft's corner; thence with the original line north 89° west 84 poles to two black oaks in said original line, corner to the tract of land sold by William G. Croft to the said Aquilla H. Brasher and also corner to said G. B. Croft; thence with another of said Croft's lines and also a line of the aforesaid tract sold by William G. Croft to Aquilla H. Brasher north 89° west 97 poles to the beginning, containing 223 acres, more or less. 2. A certain other tract or parcel of land, situated as above being the same land conveyed — Ben. H. West and others to E. D. Bruison by deed of the date the 2nd day of June, 1883, of record in the Christian county court clerk's office in Deed Book 64 at page 247 and also conveyed by the said E. De Bruison, R. H. Mason and John A. Davis to the party of the first part by three separate deeds, bearing date, respectively, the 10th day of August, 1883 and the 22*th* day of February, 1884 and the 13th day of August, 1883 and of record in said clerk's office, respectively in Deed Book No. 64 at page 459, Deed Book 65 at page 77 and Deed Book 66 at page 91 and bounded as set forth in the deed from said Ben. H. West and others to E. De Buisson, as follows: Beginning at a fallen post oak, corner to Larkin Croft's and Joseph Cordier and the original beginning corner of the survey; thence with the original line and said Croft's line north 32° west 113 poles to a small red oak with pointers in said Croft's line and corner to A. M. Campbell's; thence with her line east 142 poles to a stake in the centre of the Madisonville road, with pointers and Campbell's beginning corner; thence with said Madisonville road south 13½° east 36 poles to a stake in said road with a sweet gum marked as pointer; thence south 90° west 58 poles to a stake in said road; thence with the original line south 87° west 86 poles to the beginning, containing 63 acres more or less. 3. Also a certain *tract* other tract or parcel of land, situated as above, it being the same tract of land that was conveyed to Charles Long and John Davis by Redding Barfield and one-half of which was afterward conveyed by said Charles Long to said John Davis and that was conveyed by

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said John Davis to the party of the first part by deed bearing date the 14th day of September, 1883 and of record in said clerk's office, in Deed Book No. 65 at page 114 and bounded as
119 follows: Beginning at a post oak and hickory, William Thompson's corner; thence with his line north 75° west 142 poles to a post oak, another of his corners; thence north 30° east 117 poles to a white oak in Wooldridge's line; thence east 42 poles to a hickory and two white-oak pointers in John Boyd's *lie* line; thence south 100 poles to a post oak, Bayless Parker's corner; thence with his line north 85° east 48 poles to a post oak thence south 17° west 44 poles to the beginning, containing 63 acres, more or less. 4. Also a certain other tract or parcel of land, situated as above and being the same land conveyed *to* by A. B. Croft special commissioner of the Christian circuit court to the party of the first part by deed bearing date the 19th day of September, 1883, and of record in said clerk's office in Deed Book No. 66 at page 1000 and bounded as follows: Beginning at a post oak at the beginning corner of John Lindley survey; running thence north 10° east 89 poles to a stake and two poles east of two post oaks, marked as a corner; thence north 89° west 50 poles to a post oak Wooldridge's corner; thence north 42° west 31 poles to two small post oaks in a drain; thence north 35° east 18 poles to a post oak and white oak; thence north 74° west 26 poles to a black oak on a hill; thence south 78½° west 10 poles to a fallen Spanish oak and a small hickory; thence north 74° west 20 poles to a black oak between two flat rocks; thence north 42° east 10 poles to three white oaks; thence north 76° east 50 pole- to a black oak; thence north 19° west 10 poles to two white oaks and a black oak; thence north 59° east 44 poles to a large dead white oak; thence sotuh 17° east 16 poles to two hickories and Spanish oaks in the line of the said old Lindley survey; thence with it north 79° east 138 poles to a small hickory and several old marked pointers; thence south 29° east 176 poles to a
120 fallen post oak the original corner, also Bourland's corner thence south 30° west 76 poles to a small red oak; thence north 89° west 150 poles to the beginning, containing 220 acres, more or less. 5. Also a small lot of ground conveyed to the party of the first part by G. B. Croft and wife by deed bearing date of August 13th, 1880 and of record in said clerk's office in Deed Book No. 59 at page 109, situated in the town of Empire in said county of Christian and bounded as follows: Beginning at a large blac'-oak tree on the west corner of Main and Railroad streets in said town of Empire; thence running west with said Main street fifty feet; thence, north sixty feet; thence east *east* fifty feet to Railroad street; thence sixty feet to the beginning; this described lot being the same conveyed by the said G. B. Croft and wife in exchange for a small lot of ground, conveyed by the party of the first part to the said G. B. Croft, which is embraced within the boundary of the tracts of land first herein described and which therefore it is not intended shall be embraced in this deed, to have and to hold the above-described property lands, real property, rights franchises

and improvements, equipments and appurtenances to the party of the second part as trustee and to his successors and assigns in trust and upon and for the trusts and conditions following:

First. So long as the party of the first part shall well and truly pay the interest upon said bonds, as and when the same shall become due, it shall be entitled to the possession use and enjoyment of all of said lands, real property, rights, franchises, improvements and equipments, ways, rights of way, and appurtenances and the income, rents, issues, profits and privileges, thereof and, in the meantime, may sell and dispose of all broken, old and worn, or
121 useless implements, machinery or equipments and substitute other- in their place.

Second. In case the party of the first part shall make default in anything herein, or in said bonds required to be done on its part and such default shall continue for six months the trustee may, and, upon the request in writing of the holders of one-quarter in amount of said trust bonds, at the time outstanding, and, upon being indemnified to his satisfaction for his cost and expenses in the matter, shall enter upon and take (and the party of the first part shall, on his demand, surrender to him) possession of said lands, real property and the mines, equipments and improvements thereon and each and every part thereof and the appurtenances and hold, use, — enjoy the same power to operate said mines and to carry on the business of mining selling shipping and transferring stone coal which appertains to the corporate rights and privileges of the party of the first part and with power also to collect any and all of the income and rents, issues, proceeds and profits of said party and of said business and apply the same to the payment of taxes and assessments thereon and of the interest and principal of prior liens and charges thereon and for such repairs, betterments and improvements as, in the judgment of the trustee, may be necessary, or expedient and, after deducting the expenses of its holding, use, enjoyment and operating, the trustee shall apply the balance thereof to the payment of all interest which may have become due upon said bonds in the order of its maturing and thereafter to the payment of the principal of any of them which may have become due. Upon the payment of all interest and principal so to become due, the trustee shall relinquish and return said lands real property, mines, equipments, improvements and appurtenances to the party of the first part to be
122 held by it, subject to the trusts and conditions of these presents.

Third. Upon the happening of the default of the party of the first part and its continuance, as aforesaid the trustee may, and, upon the request in writing of the holders of one-quarter in amount of said bonds at the time outstanding, or, upon the dissolution of said corporation, or upon the expiration of its charter, without renewal, before the principal of said bonds shall become due and payable, with or without entry, as aforesaid, shall resort to such proceedings, in law or equity as may be required by the laws of the Commonwealth of Kentucky for the enforcement of the lien hereby created on the said land, real property, improvements, equipments

and appurtenances and the subjection of the same and of the rights and interest of the party of the first part therein, or in relation thereto, to the payment of the principal and interest of the said bonds, notwithstanding the principal, in accordance with the tenor of the said bonds, may not have then become due, together with all costs of such proceedings, including a fair and reasonable compensation for the services of the trustee and his counsel, in which proceedings, all and singular the said property, rights and interest may be adjudged to be sold upon such terms *of* to the court may seem just, equitable and right, in respect to the interest of all parties concerned.

Fourth. The trustee named, herein, may resign by written notice to the party of the first part, taking effect thirty days thereafter. He or any successor in the trust may be removed by proper proceedings in the Christian circuit court for cause shown and any case of any vacancy occurring a successor may be appointed by the Christian county circuit court, or by the judge thereof in vacation, upon proper application therefor, either by the party of the first part, or any or all of the holders of said bonds. The trustee
123 shall be entitled to a reasonable compensation for his services in the administration of the trust to be paid to him by the party of the first part or out of any money or property belonging to *to* the trust in his hands. The trustee shall not be responsible, except for his own wilful neglect, or misfeasance, and the provisions herefor respecting the trustee shall be deemed to relate to the original trustee and all and every of his successors in the trust. The trustee shall, at the request of the party of the first part, authenticate by his signature the bonds hereby secured and deliver the same to it to be by it issued.

Fifth. It is understood and expressly stipulated that the purchaser, or purchasers, of said property and rights at any sale thereof by virtue of the legal proceedings as hereinabove in the third clause hereof mentioned, shall not be liable to *be* the application of the purchase-money and that any and all of the purchase-money remaining after the satisfaction of the judgment, or decree of the court, under which such sale shall be made and the payment of all costs and expenditures, incident thereto shall be paid over to the party of the first part, or to such person, or persons as may be entitled thereto by reason of any interest in or claim upon the said corporation, or its property, or franchises; and it is further understood and expressly stipulated that in any such proceedings, as are in the third clause hereinabove mentioned, the trustee then being shall state and submit his accounts as such to the court and that the same shall be passed upon and settled finally by the court and upon such final settlement, the trustee shall receive a discharge from all trust in respect hereof by judgment of the court.

In witness whereof the party of the first part has caused the signature of the president and secretary to be hereto affixed and
124 the same to be acknowledged delivered by its president and

the party of the second part has hereto set his hand, the day and year above written.

EMPIRE COAL MINING COMPANY.
J. W. MANIER, *Pres.*
A. W. HARRIS, *Trustee.*

J. W. ANDERSON, *Secretary.*

STATE OF TENNESSEE, *County of Davidson,* } *ss:*

Be it known that on the 12th day of January, A. D. 1885, before me, the undersigned, R. R. Caldwell, notary public within and for the county and State aforesaid, duly commissioned and sworn and dwelling in the city of Nashville, personally appeared the within-named J. W. Manier, whose name is signed to the within instrument as president of the Empire Coal and Mining Company, the within-named grantor, and with whom I am personally acquainted, and who is known to me to be the president of said company, and acknowledges that, being informed of the contents of said instrument, he executed the same and delivered the same, as the voluntary act and deed of said company for the purposes therein contained, on the day the same bears date; and the said J. W. Manier, being by me duly sworn, did depose and say that he resides in Nashville, Tennessee, and that he, as president of said company, subscribed his name to the said instrument and acknowledged and delivered the same by the authority and direction of said company. And at the same time also appeared the within-named A. W. Harris, whose name is signed to the within-named instrument as grantee, and with whom I am personally acquainted, and acknowledged that, being informed of the contents of said instrument, he executed, signed, and delivered the same voluntarily and as his act and deed, for the purposes therein stated, on the day the same bears date.

Given under my hand and notarial seal, at my office, in
125 Nashville, Tennessee, the day and year aforesaid.

R. R. CALDWELL,
Notary Public.

[NOTARIAL SEAL.]

STATE OF KENTUCKY, *Christian County,* } *ss:*

I, John W. Breathitt, clerk of the Christian county court, do certify that the foregoing deed of trust from Empire Coal and Mining Company to A. W. Harris, trustee, was this day produced to me in my office, with the certificate thereon, and ordered to record; whereupon the same, together with this and the foregoing certificate, was ordered to record and has been duly recodrded in my office.

Given under my hand this January 13th, 1885.

JOHN W. BREATHITT, *Clerk.*

STATE OF KENTUCKY, } ss:
Christian County, }

I, John W. Breathitt, clerk of the Christian county court, do certify that the foregoing is a true and correct copy of a mortgage made from Empire Coal and Mining Company to A. W. Harris, trustee, *of* which is duly noted of record in my office.

Given under my hand — seal this September 24th, 1886.

JOHN W. BREATHITT, *Clerk.*

And said amended bill and Exhibit "R" were endorsed: "Filed October 26th, 1886. Lewis T. Baxter, clerk."

And thereupon a summons was issued out of said court, which is as follows, to wit:

The President of the United States of America to the marshal of the middle district of Tennessee, Greeting:

You are hereby commanded to summon James W. Manier, Thomas D. Fite, James A. Pigue, William Porter, and Horton Fall and James D. Richardson, executors of the last will and testament of W. H. Evans, deceased, and A. W. Harris, trustee, all citizens of Davidson county, Tennessee, and the Empire Coal and Mining Company, having its principal office and officers in Davidson
126 county, Tennessee, if to be found in your district, to be and appear before the judges of the United States circuit court for the middle district of Tennessee, in the sixth circuit, at the Federal court-room, in Nashville, in said State, on the third Monday in April next, then and there to answer the amended bill of complaint filed on the equity side of the docket of said court against them by the Empire Coal and Transportation Company, a corporation duly organized under the laws of the State of Kentucky. Herein fail not and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 28th day of February, in the year of our Lord eighteen hundred and eighty-seven, and of American Independence the one hundred and eleventh year.

H. M. DOAK, *Clerk,*
By CHAS. NASH, *D. C.*

MEMORANDUM.—The defendants are required to enter their appearance in the office of the clerk of this court on or before the 4th day of April next and plead, answer, or demur or the bill will be taken for confessed and set for hearing *ex parte.*

H. M. DOAK, *Clerk.*

Said summons is endorsed as follows, to wit: "Issued on the 18th day of February, 1887. H. M. Doak, clerk."

And said summons is further endorsed: "Received at Nashville, February 18th, 1887, and executed same day on William Porter, James W. Manier, Horton Fall, and James Richardson, executors of

W. H. Evans, deceased, and the Empire Coal and Mining Company by making the contents known to them by leaving a copy of this summons with each one of them. This writ was served on the Empire Coal and Mining Company by making the contents known to James W. Manier, the president, of said company, at its chief office in my district, and I also left with him a copy of this
127 bill. This February 18, 1887. S. F. Wilson, U. S. marshal."

And said summons is further endorsed:

"Executed on James A. Pigue and A. W. Harris, trustee, by making the contents hereof known to them and leaving a copy of this summons with each of them, Feb'y 19th, 1887. S. F. Wilson, U. S. marshal."

And said summons is further endorsed:

"Executed on the defendant Thos. D. Fife by making known the contents of this within summons to him this the 4th day of March, 1887. S. F. Wilson, U. S. marshal, by T. B. Ballou, D. M."

This cause was heard at chambers by the Hon. Howell E. Jackson, judge, etc., upon the demurrer heretofore filed, to wit, on June the 2nd, 1886, and at said hearing on Nov. 24th, 1887, the court was pleased to order that the demurrer was well taken and to direct that the bill and amended bill be dismissed without prejudice, unless the complainant should so amend its bill of complainant as to dismiss the cause as to all defendants who are citizens of the same State with itself; whereupon the complainant asked leave of the court to file an amended bill, and said amended bill was, with leave, filed, and by consent of counsel appearance was entered for defendants and no process was required to be issued and no decree, judgment, or order was entered.

And thereafter, to wit, on January the 5th, 1888, the complainant filed its second amended bill, which is as follows, to wit:

128 To the judges of the United States circuit court for the middle district of Tennessee:

Complainant, The Empire Coal and Transportation Company, a corporation duly organized under the laws of Kentucky, state- that heretofore it filed its original bill in this court, charging in substance as follows:

That it was organized in April, 1878, and was the owner of coal mines and privileges and a mercantile business and other property to the amount of one hundred thousand dollars or more, located in Christian county, Kentucky; that its president, A. L. Blackman, who owned two-thirds of its capital stock of $200,000, was compelled to go to Europe in 1878, and that prior to his departure he perfected arrangements whereby complainant would have funds to continue mining operations; that after his departure these arrangements were disregarded and the complainant, owing to mismanagement and negligence, became indebted to the amount of about $12,000; that about August 1st, 1878, a scheme was formed by one Criddle, who was secretary and treasurer of the complainant, and one Helms, who was also a director and president of the complainant, and other then

unknown parties, who were creditors of the complainant, to get possession of complainant's capital stock, and thereby to get possession of complainant's properties.

That in pursuance of this scheme and on the 12th day of August, 1878, a pretended meeting of the stockholders of the complainant was held, and said parties at a meeting, said meeting, attempted to make and execute a trust deed of all complainant's property to one Glasgow, trustee, to secure said creditors of the complainant company; that this deed of trust was void because of the non-compliance of said trustee with the laws in such cases made and provided,

as more fully appears in the original bill, pages 17 and 18;

129 that, after said deed was executed, the former scheme to obtain possession of complainant's capital stock was modified and carried out, as appears in said original bill, pages 20–23, so that said confederates did undertake to allot said stock to themselves and organize anew the officers of complainant, and among the creditors were the defendants to the original bill, to wit, James W. Manier, James A. Pigue, Thomas D. Fite, William Porter, and William H. Evans; that in this organization the defendants James W. Manier and William H. Evans were elected directors and said Evans president of the complainant; that immediately upon the election of the said Evans and the said Manier, as above recited, they at once began to conduct the affairs of complainant in such manner as to redound to their personal interests, and such acts were done in pursuance and accordance with the scheme entered into with their confederates for the purpose of obtaining possession of complainant's properties, as appears in said original bill, pages 24–27.

That notwithstanding the gross mismanagement of complainant's business from September, 1878, to April, 1879, it constantly made money and improved in value; that shortly prior to January, 1879, certain parties held mechanics' liens upon certain of complainant's realty for sums not exceeding one thousand dollars, and were proposing to adjust their claims in any way convenient to complainant's officers; that all such proposals were refused at the instance of said Manier and Evans, and that suits were shortly instituted to collect such debts, and that complainant's officers allowed such suits to be prosecuted to final judgments and foreclosures without any defence; that, a few days after said suits were reduced to judgments, the said Evans, president, on his own responsibility, ordered the mines of complainant closed and work therein discontonued.

130 That in March, 1879, said lienors debtors obtained decrees to have a part of complainant's property sold on April 17th, 1879, and that shortly prior to said sale said Manier and his co-conspirators, Thomas D. Fite, in pursuance of a further scheme formed for the purpose of obtaining possession of complainant's property for themselves and said Pigue, Porter, and Evans, and for the purpose of excluding from participation in complainant's property their former co-conspirators in the schemes above recited, secretly visited the properties of complainant for the purpose of inspecting them with a view to buying them at the approaching sale

and revealed said scheme to one Glasgow by proposing to buy in the property and dividing it among themselves in equal sevenths to be allotted to the five conspirators above named and the said Glasgow and one Bunch, and that complainant was the owner of a large amount of personal property and could easily have paid said lien debt upon a part of its property with a small part of its personal property, but that it was a part of said scheme to allow said realty to be sold in order that said conspirators might obtain color of title not participated in by their said original conspirators or confederates; that the realty to be sold consisted of about twenty-five acres of land upon which was located complainant's railroad extending from its mines to the St. Louis and Southeastern railway, and that without the aid of this 23 acres no connection with an outside railroad could be had, and that the mines were thereby rendered useless for the want of an outlet for its production; that there was one other outlet from its mines over a strip of land consisting of about two acres of land adjacent to said 23-acre tract, but that said Manier held an option to buy this strip of land for a time
131 extending beyond the time for the sale of the said 23-acre tract, showing clearly an intention of depriving complainant of a means of egress and ingress to and from its mines in the event of a sale of the said 23-acre tract on April 17th, 1879; that the said tract of land to be sold as stated had formerly been laid out in lots, erected upon many of which were houses, and that a small portion of said lots would have sold for more than enough to have discharged all the debts upon said property and at the same time have left an approach to and from said mines; that no action was taken or allowed to be taken by said officers of complainant to have said lots sold separately, but allowed the whole tract to be sold together, and was bid in by the said Manier, who was at the time a director of the complainant, for the sum of 1,900 dollars, when in fact the actual value of said property was more than $12,000; that after said sale the said Manier openly boasted that he held the key to the situation and could compel a sale of the remainder of complainant's property to himself at his own price; that upon the 8th day of April, 1879, it being the day following the sale above mentioned, the said Manier and his associated confederates procured a meeting of complainant's directors to be held for the purpose of making a disposition of the remaining properties of the complainant, the right of way to and from the mines having been sold as stated, as appears from the minutes of that date; that complainant was the owner of certain valuable mining privileges in certain adjacent tracts of land under leases, and that by the gross negligence and conspiracy of said Manier and his confederates — were greatly imperilled and have since been purchased in fee by said Manier and his confederates; that about April 17th, 1879, the said Glasgow, at the instigation of said Manier, Evans, and their
132 conspirators, pretended to claim and assert title to the remainder of the property of complainant's under said old trust deed, and after certain void preliminary steps said pretended trustee sold at public auction all said properties to the said Manier for the sum

of fourteen hundred dollars, although a purchaser was ready and willing to bid upwards of ten thousand dollars for said property, but was prevented therefrom by the said Manier and his confederates; that said sale was illegal and void and was made for the purpose of giving color of title to the said Manier and his confederates; that shortly after this sale said Manier and his confederates, Evans, Fite, Porter, and Pigue, resumed mining operations under the name and style of J. W. Manier, and that said conspirators continued to operate said mines and carry on said mercantile business, as above recited, and realized large profits and could have reasonably realized much larger profits with proper care and attention to said business; that said Manier and confederates in further pursuance of said scheme procured the lessors of certain mining lands of complainant to file bills to declare forfeitures of all complainant's leases when in fact no such suits could have been instituted until a much later time, according to the terms and conditions of said leases, and that before a final determination of said suits the said Manier purchased the fee in said leasehold estates for himself and confederates.

That shortly thereafter the said Manier, who was at all times mentioned as a citizen of Nashville, Tennessee, in further pursuance of said scheme associated with himself his co-conspirators, Fite, Porter, Pigue, and Evans, likewise citizens of Nashville, Tennessee, at all times referred to in said original bill, and attempted to procure from the State of Kentucky a charter under the name
133 and style of the Empire Coal and Mining Company and pretended to organize said pretended corporation with the said parties as directors and owners of all the capital stock of one hundred thousand dollars, which they then held and owned and still own at all times since; that upon said pretended organization the said Manier pretended to transfer and convey to said pretended corporation all said properties, real and personal and mixed; that said conspirators, acting under the name of the said Empire Coal and Mining Company, have continued to operate said mines and to run said mercantile business and have realized large profits therefrom and could with due diligence have realized larger profits, and that they have by negligence and improper care caused much damage and waste to said property and business, and that, realizing the many imperfections in their title to said property, have run and operated said business and mines with a view — realizing as large profits in as short time as possible, for all of which said conspirators are liable to account to your orators and should be made to account to your orators, and that they have realized fully twenty thousand dollars from said mines and mercantile business for all of said years, for which said conspirators are personally and individually liable to your complainant and should be made to account individually, and that the use and occupation was *worth* reasonably worth more than twenty thousand dollars per annum, all of which said conspirators have received and appropriated to their own use and are liable personally and should be made to account to complainant, and that they are still using and occupying said properties and appropriating to their own use all such profits and should be made

to account to complainant personally. Complainant prays in its said original bill that said James W. Manier, Thos. D. Fite,
134 William Porter, and James A. Pigue, Horton Fall, and James D. Richardson, who are the executors of the last will and testament of W. H. Evans, deceased, and all citizens of Davidson county, Tennessee, together with the Empire Coal and Mining Company, be made defendants to the original bill and with appropriate relief under the charges and allegations of the bill.

Complainants here refer- to the original bill, its prayer and exhibits, and makes the same a part hereof as if the same was herein set out *in hæc verba*. Said bill seeks to make said defendants, who are citizens of Davidson county, Tennessee, personally liable to account for the rents and profits realized by them out of said properties and to account for the profits which they have appropriated to themselves.

Complainant further states that in February, 1877, it filed its amended bill in this court, charging in substance as follows: That in January, 1885, the defendants, in furtherance of their conspiracy, undertook and pretended to execute a mortgage to one A. W. Harris, a citizen of Davidson county, Tennessee, upon all said property, real, personal, and mixed, for the pretended purpose of securing $25,000 of bonds which said defendants had caused its creature, the Empire Coal and Mining Company, to issue; that complainant was not aware of the existence of said mortgage when it filed its original bill; that all of said bonds are held by said conspirators, and their issuance was but another scheme to deprive complainant of its properties; that said trustee had full knowledge of the fact that defendants had no title to the property when said mortgage was executed, and that they were only holding the same in manner stated in said original bill.

Complainant charged that said mortgage to said Harris was void and a cloud upon complainant's title, and that Harris holds
135 the title to said property in trust for the complainant; that if mistaken in charging notice upon said Harris, that still said mortgage is void, because the beneficiaries are the defendants aforesaid; that even if said defendants have sold the said bonds to innocent parties, that they are personally liable to complainant in the amount in which they have so encumbered complainant's property, and that they should be made to account for whatever amount they have so fraudulently incumbered said property, together with interest and costs.

That the Empire Coal and Mining Company is but the creature of said defendants, who own *its* all its stock, rights, and franchises, and was brought into existence for the sole purpose of aiding them in their fraudulent schemes, and that all the large profits they have realized from said properties have been pocketed by said defendants individually, and that they are liable personally and should be made to account personally and individually for the rents and for the use and occupation of said property; that the Empire Coal and Mining Company is insolvent and has nothing more than the mere nomi-

nal possession of this complainant's properties, as hereinbefore stated.

Complainant prays for the same relief as in its original bill, and that said Harris be made party defendant, and for appropriate relief under the facts stated in its amended bill. Complainant here refers to said amended and original bills, its prayers and exhibits, and makes the same a part hereof as if they were herein set out *in hæc verba*.

Complainant now states and charges by way of second amendment to its original and amended bills that on the — day of ——, 188–, the said defendant conspirators, in further pursuance of their fraudulent schemes and for the purpose of better concealing their frauds and wrong doings, pretended to
136 procure from the State of Kentucky a charter under the name and style of the Empire Coal & Mining Company, which is the same corporation mentioned and referred to in the original and amended bills; and said defendants conveyed to said pretended corporation all the properties belonging to complainant and mentioned in said bills and converted by said defendants, as stated, to their own use and benefit. Complainant further states that the application for said charter was acknowledged by said five defendants before a notary public in Tennessee; that no organization was ever had or attempted to be had in the State of Kentucky, which is required by the laws of that State; that all the meetings of the so-called directors of said pretended corporation were held in the city of Nashville, Tennessee, and the principal office located in said city; that all of the pretended directors of said pretended corporation are and have been for many years citizens of Tennessee; that said five defendant conspirators have been the only directors of said pretended corporation, except when some other conspirator, well knowing the facts set out in said bills, was substituted for a period of time to better carry out said conspiracy to defraud complainant of its rights.

Complainant further charges that all the stock of said pretended corporation is held and owned and has been held and owned by said five defendants ever since the pretended corporation was brought into existence, as before stated, and that no part of the same is owned or has been owned and held by any innocent third parties.

Complainant therefore charges that in no sense is said corporation legally and validly organized, but that said five defendants still hold and possess all complainant's property, rights, and privileges, as set out in said bills, and that said corporation is nothing
137 more than a partnership owned and controlled by said five defendants, who are all citizens of Tennessee, and are doing business under the name and style of the Empire Coal and Mining Company. Complainant charges that no organization was effected or attempted to be effected in the State of Kentucky under said pretended charter, but *but* that all acts done and attempts at organization were held in the State of Tennessee, where all the said direcotors and stockholders resided. Complainant states that these facts were not known

to it until within the past few days, and that it had no means of ascertaining such facts because the books and papers of said pretended corporation and all the facts connected with its pretended organization were within the exclusive knowledge of said defendant conspirators.

Premises considered, complainant prays that the party defendants to its original and amended bills heretofore filed in this cause be made defendants to this amended bill, and that said Fite, Porter, Pigue, Manier, and Horton Fall and James D. Richardson, executors of Evans, be made defendants as partners doing business under the name and style of the Empire Coal and Mining Company, and that proper and necessary process issue to this end, and that they be held to account and made to pay to complainant all the rents, profits, and benefits of any nature and kind whatsoever that they have received or should have received from the operation of complainant's mines and properties, whether they received the said profits and benefits in the form of profits or dividends or in any other form or manner, and that they be made to account personally and individually, as prayed in this and the original and amended bills, and that the title to said properties be declared to be held by said defendants, whether in their own name or under the name of
138 the Empire Coal and Mining Company, for the use and benefit of complainant, and that the title to said property be divested and vested in complainant; and if for any reason complainant is not entitled or cannot have the title to said property divested and vested in it, that defendants, citizens of Davidson county, Tennessee, hereinbefore named, be held personally or individually liable for the highest value thereof, and for such other and further relief as to equity may belong.

T. J. FREEMAN,
HILL & GRANBURY,
Solicitors.

Said amended bill is endorsed: "Filed January 5th, 1888. H. M. Doak, clerk."

And thereupon came the defendants and filed a demurrer in this cause, which is as follows, to wit:

Circuit Court of the United States, Middle District of Tennessee. In Equity.

The demurrer of James W. Manier, James A. Pigue, Thomas D. Fite, William Porter, Horton Fall, and James D. Richardson to the second amended bill filed in the above-entitled cause.

The aforesaid defendants, by protestation, not admitting all or any of the matters in said bill contained to be true in such manner and form as the same are therein set forth, do demur to said bill and show to the court here the following grounds of demurrer:

First. The only ground shown upon which complainant bases its right to invoke the jurisdiction of the court is the citizenship of the

parties, but complainant states that it is a citizen of Kentucky, and also shows in effect that the defendant The Empire Coal — Mining
Company is a citizen of the same State; and it appears on
139 the face of the bill that said defendant company is not a merely nominal party, but that relief is sought against it, and that its rights must be seriously affected by any decree made on the merits of the case.

Second. The sole ground of jurisdiction shown is the citizenship of the parties. Complainant states that it is a citizen of the State of Kentucky; it alleges that the defendant The Empire Coal and Mining Company also claims to be a company acting under a charter granted by the State of Kentucky. Complainant alleges that said company claims to own the properties claimed by complainant in this case. The bill shows that any decree on the merits would seriously affect the claims of said company; but complainant attempts to sustain the jurisdiction by alleging that said company was never in fact lawfully organized; that it is a mere partnership; that it was conceived in fraud as part of a scheme to defraud complainant, and that the conveyance to it is fraudulent and void.

These defendants aver that complainant cannot deny the corporate existence of said Empire Coal and Mining Company while making it a party to this bill and thereby alleging its existence.

And then defendants aver that the other said allegations present questions on the merits, to decide which the jurisdiction must first be admitted.

Wherefore and for divers other good grounds of demurrer appearing in said bill these defendants do demur thereto and demand the judgment of the court whether they shall be compelled to make any other or further answer to said bill, and they pray to be hence dismissed with their costs — charges in this behalf most wrongfully sustained.

THOMAS H. MALONE,
Counsel for Defendants.

Thos. H. Malone states that he is of counsel for the *afore-*
140 aforesaid demurrants, and that, in his opinion, the foregoing demurrer is good in point of law and proper to be filed in this case.

THOS. H. MALONE.

J. W. Manier, being duly sworn, deposes and says that the foregoing demurrer is not interposed for delay.

J. W. MANIER.

Sworn to and subscribed before me this March 10th, 1888.
H. M. DOAK, *Clerk.*

Said demurrer is endorsed: "Filed March 10th, 1888. H. M. Doak, clerk."

The cause was then further heard before the Hon. Howell E. Jackson, judge, upon the bill, amended bill, and demurrer to the second amended bill, and the following decree rendered, to wit:

This cause was heard before the Hon. H. E. Jackson, judge, etc., this the fourth day of December, 1888, upon the demurrer to the bill as amended and argument of counsel; whereupon the court was of opinion that the demurrer was well taken, and that the bill as framed should be dismissed for want of jurisdiction; but the court gave permission to the complainant to amend its bill by dismissing as to any of the defendants or as it should be advised. Thereupon the complainant declined to amend and it was then and is hereby ordered, adjudged, and decreed by the court that complainant's bill be dismissed for want of jurisdiction and without prejudice to complainant's right to bring suit upon the same subject-matter as it may be advised; and it is further ordered, adjudged, and decreed by the court that the costs be paid by complainant and its sureties, for which execution may issue, and from the decree dismissing its bill complainant prays an appeal to the Supreme Court of
141 the United States, which is granted upon its giving bond with good security in the sum of five hundred dollars.

And thereupon came the complainant and filed its bond, which is in words and figures as follows, to wit:

Know all men by these presents that the Empire Coal and Transportation Company are held and firmly bound unto the Empire Coal and Mining Company, J. D. Richardson, Horton Fall, executors of the estate of Wm. H. Evans, deceased; T. D. Fite, Wm. Porter, James W. Manier, and James A. Pigue in the full and just sum of five hundred dollars, to be paid the said parties, certain attorneys, executors, administrators, or assigns; to *the* which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a circuit court of the United States, in a suit depending in said court between the Empire Coal and Transportation Company and the Empire Coal and Mining Company *et al.*, a decree was rendered against the said Empire Coal and Transportation Company, and the said Empire Coal and Transportation Company having obtained an appeal and filed a copy thereof in the *in the* clerk's office of said court to reverse the decree in the aforesaid suit, and a citation directed to the said Empire Coal and Mining Company *et al.*, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next: Now, the condition of the above obligation is such that if the said Empire Coal and Transportation Com-
142 pany shall prosecute said appeal with effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

W. T. GLASGOW, *Sec'y.*
W. T. GLASGOW.
J. H. CRIDDLE.
R. F. ADAMS.

Approved by—
H. M. DOAK, *U. S. Clerk.*

STATE OF TENNESSEE, *County of Davidson,* } ss:

Personally appeared before me, W. E. Metzger, a notary public for said county and State, the within-named W. T. Glasgow, secretary; W. T. Glasgow, J. H. Criddle, and R. F. Adams, the within bargainors, with whom I am personally acquainted, and acknowledged that they executed the instrument annexed for the purposes therein expressed.

Witness my hand and notorial seal this the 3d day of June, 1889.

W. E. METZGER,
Notary Public.

Said bond is endorsed: "Filed June 15th, 1889. H. M. Doak, clerk."

143 I, H. M. Doak, clerk of the United States circuit court for the middle district of Tennessee, in the sixth circuit, hereby certify that the foregoing is a true, perfect, and complete transcript of the record in the cause of the Empire Coal and Transportation Company against the Empire Coal and Mining Company, which is No. 2725 upon the docket of said court and upon the equity side thereof, as the same is of record and upon file in my office.

In witness whereof I have hereunto subscribed my name and affixed the seal of the court, at my office, in Nashville, Tennessee, this the 18th day of June, anno Domini one thousand eight hundred and ninety-nine, and of American Independence the one hundred and thirteenth year.

H. M. DOAK,
Clerk U. S. Circuit Court.

Costs of Cause.

Clerk	64 85
Marshal	30
Att'y	20
Transcript	56 75
	$171 60

Paid by the complainants.

H. M. DOAK, *Clerk.*

Endorsed on cover: Case No. 13,926. M. Tennessee C. C. U. S. No. 60. The Empire Coal and Transportation Company, appellant, *vs.* The Empire Coal and Mining Company, J. D. Richardson & Horton Fall, executors of Wm. H. Evans, deceased, T. D. Fite, *et al.* Filed November 19, 1889.

150 U.S. 159

Office Supreme Court U. S.
FILED.
OCT 10 1893
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

October Term, 1893. Term No. 60.

THE EMPIRE COAL AND TRANSPORTATION COMPANY, Appellant,

vs.

THE EMPIRE COAL AND MINING COMPANY, J. D. RICHARDSON AND HORTON FALL, Executors of William H. Evans, deceased; T. H. FITE, *et al.*

Appeal from the Circuit Court of the United States for the Middle District of Tennessee.

BRIEF FOR APPELLANT.

The appellant filed its bill of complaint in the court below, April 3, 1886, alleging that it is a corporation duly incorporated under and by virtue of an act of the legislature of the State of Kentucky, approved on the 2d day of April, 1878. (Acts Kentucky, 1878, page 248, c. 706.)

That pursuant to the act of the legislature of Kentucky, the requisite capital stock was immediately subscribed, and the incorporation duly organized on the 5th day of April, 1878, by the election of directors and the adoption of by-laws. (Rec., 1, 2.)

It is alleged in the bill that the appellant became the lessee and owner of large tracts of coal lands and other property in Christian County, Kentucky, and that the business of the corporation was prosperous and profitable, when certain directors and stockholders of the corporation, who are appellees herein, by fraud, conspiracy, and scheming, succeeded in wrecking the appellant corporation, by first fraudulently having the property thereof conveyed to one of the co-conspirators, and then, through him, to what purports to be "The Empire Coal and Mining Company," which, it is alleged, was fraudulently pretended to be incorporated for this very purpose, inasmuch as no organization was ever effected in the State of Kentucky for the purpose of carrying into force the provisions of the pretended charter, which was obtained under the general laws of the State of Kentucky, and the principal office located in Nashville, Tennessee. (General Statutes of Kentucky, 1888, p. 763, c. 56.)

Rec., 1–26, 64–71, 84.

An amended bill was filed on October 26, 1886. (Rec., 64–71.)

Appellees demurred to the bill and amended bill, upon the ground that the appellant and "The Empire Coal and Mining Company" are citizens of the same State, and, inasmuch as no ground of jurisdiction was alleged in the bill but that of the citizenship of the parties, the court was without jurisdiction of the cause. (Rec., 63–64.)

The cause was heard at chambers on the 24th day of November, 1887, upon the bill, amended bill, and demurrer, and the demurrer was sustained and leave granted to appellant to file an amended bill, which was done on the 5th day of January, 1888. (Rec., 79; 79–85.)

The appellees again demurred to the amended bill upon substantially the same ground, to wit, that appellant and "The Empire Coal and Mining Company" are

citizens of the same State, with the additional ground that the appellant is estopped from denying the corporate existence of said Empire Coal and Mining Company, inasmuch as it has made it a party to this suit. (Rec., 85, 86.)

The cause was further heard on the 4th day of December, 1888, upon the demurrer to the bill as amended the second time, and the demurrer was sustained, the bill dismissed without prejudice for want of jurisdiction, and an appeal prayed and allowed to the Supreme Court of the United States. (Rec., 86, 87.)

It will be observed, therefore, that the only question presented upon this appeal is one of jurisdiction, which depends to some extent upon the determination of the question of the validity of the incorporation of the so-called "Empire Coal and Mining Company."

The error assigned is: The court below erred in sustaining the demurrer of the appellees to the bill and amended bill of the appellant, when it should have overruled the demurrer and should have entered a decree for appellant, as prayed for in its bill as amended.

The averments in the original bill and the amendments as to the "Empire Coal and Mining Company," are as follows:

"FORTY-NINTH. That thereafter, and on or about the——day of———, 1879, the said MANIER procured to be incorporated the defendant, The Empire Coal and Mining Company, for the purpose of mining, etc., with its principal office located at NASHVILLE, TENNESSEE, under and by virtue of an act of the legislature of the State of KENTUCKY, passed on the——day of———, 188—, and entitled an act, etc., being chapter——of the laws of——and the acts amendatory thereof and supplementary thereto; that the defendants, JAMES W. MANIER, JAMES A. PIGUE, THOMAS D. FITE, and WILLIAM PORTER, were incorporators of the said company, and are and have been ever since the said organization thereof directors therein; that WILLIAM

H. EVANS was also an incorporator of said company and a director thereof from the date of its organization until the——day of———1884, on which day the said WILLIAM H. EVANS died at the city of NASHVILLE, TENNESSEE, leaving a last will and testament, whereby he appointed the defendants, HORTON FALL and JAMES D. RICHARDSON, the executors of his said will; that the said will was duly proved on or about the——day of———, 18—, before———, and recorded in the office of the county judge of the county of DAVIDSON, State of TENNESSEE, and recorded in the office of the clerk of said county on or about the ——day of———, 18—, and thereafter the said county judge issued to said FALL and RICHARDSON letters testamentary upon the estate of said EVANS, deceased, under said last will." (Original Bill, Rec., 22.)

* * * * * * *

"Complainant further states and charges that the Empire Coal and Mining Company is but the creature of said defendants, MANIER, FITE, PORTER, PIGUE, etc., who own all its pretended stock, rights, and franchises, and it was brought into existence by them as part of their fraudulent scheme hereinbefore set out, for the fraudulent purpose of cheating complainant out of its rights and properties and better enabling them to hide their own frauds and breaches of trust, and that all the large profits that have been realized during the operations of said mines, as set out in the original bill, have been pocketed and appropriated by said MANIER and his co-conspirators, individually and personally, and that they are liable and should be made to account to complainant for the same and for the rents and use and occupation of said *the* properties; and complainant charges that the so-called Empire Coal and Mining Company is insolvent and has nothing more than the mere nominal possession of this complainant's properties, as hereinbefore stated." (1st Amended Bill, Rec., 69–70.)

"That the Empire Coal and Mining Company is but the creature of said defendants, who own *its* all its stock, rights, and franchises, and was brought into existence for the sole purpose of aiding them in their fraudulent schemes, and that all the large profits they have realized from said properties have been pocketed by said defend-

ants individually, and that they are liable personally and should be made to account personally and individually for the rents and for the use and occupation of said property; that the Empire Coal and Mining Company is insolvent and has nothing more than the mere nominal possession of this complainant's properties, as hereinbefore stated."

* * * * * * *

"Complainant now states and charges by way of second amendment to its original and amended bills, that on the ——day of———, 188—, the said defendant conspirators, in further pursuance of their fraudulent schemes and for the purpose of better concealing their frauds and wrong-doings, pretended to procure from the State of KENTUCKY a charter under the name and style of the Empire Coal and Mining Company, which is the same corporation mentioned and referred to in the original and amended bills; and said defendants conveyed to said pretended corporation all the properties belonging to complainant and mentioned in said bills and converted by said defendants, as stated, to their own use and benefit.

"Complainant further states that the application for said charter was acknowledged by said five defendants before a Notary Public in TENNESSEE; that no organization was ever had or attempted to be had in the State of KENTUCKY, which is required by the laws of that State; that all the meetings of the so-called directors of said pretended corporation were held in the City of NASHVILLE, TENNESSEE, and the principal office located in said City; that all of the pretended directors of said pretended corporation are and have been for many years citizens of TENNESSEE; that said five defendant conspirators have been the only directors of said pretended corporation, except when some other conspirator, well knowing the facts set out in said bills, was substituted for a period of time to better carry out said conspiracy to defraud complainant of its rights.

"Complainant further charges that all the stock of said pretended corporation is held and owned, and has been held and owned by said five defendants ever since the pretended corporation was brought into existence,

as before stated, and that no part of the same is owned, or has been owned and held by any innocent third parties.

"Complainant therefore charges that in no sense is said corporation legally and validly organized, but that said five defendants still hold and possess all complainant's property, rights, and privileges, as set out in said bills, and that said corporation is nothing more than a partnership owned and controlled by said five defendants, who are all citizens of TENNESSEE, and are doing business under the name and style of the Empire Coal and Mining Company. Complainant charges that no organization was effected or attempted to be effected in the State of KENTUCKY under said pretended charter, but *but* that all acts done and attempts at organization were held in the State of TENNESSEE, where all the said directors and stockholders reside. Complainant states that these facts were not known to it until within the past few days, and that it had no means of ascertaining such facts, because the books and papers of said pretended corporation, and all the facts connected with its pretended organization, were within the exclusive knowledge of said defendant conspirators." (Rec., 83–5.)

We are thus particular in setting out the allegations of the bill and amended bill, for the reason the case rests entirely upon their sufficiency.

The averments of distinct facts contained in the original and amended bill were admitted by the demurrer, which is in effect an admission that "The Empire Coal and Mining Company" was a creature of fraud and conspiracy; that its organization was never perfected according to the provisions of the charter and of the general laws of the State of Kentucky; that it is a mere partnership consisting of James A. Manier, James R. Pigue, Thomas D. Fite, William Porter, James D. Richardson, and Horton Fall, executors, etc., of William H. Evans, deceased, the appellees herein, who are making use of what purports to be such corporation for their private ends, and as a part of the conspiracy and scheme to defraud appellant out of its property and rights. There

was no denial, even in general terms, of the fraud charged so specifically, and under the rulings of this court often made the demurrer should have been overruled and a decree rendered for appellant. (Boyer *v.* Boyer, 113 U. S., 689, 701; and especially Pacific, etc., *v.* Missouri, etc., 111 U. S., 505, 522; and Platt *v.* Mead, 9 Fed. R., 91.)

Upon the pleadings we think it can be safely contended that "The Empire Coal and Mining Company" never existed as a corporation, and was not, therefore, a citizen of the State of Kentucky when appellant's bill was filed in this suit.

The general statute of Kentucky does not authorize, if the legislature had the power to do so, the organization of the corporation under its charter outside of that State, yet it is admitted the organization, if any was effected, took place in Tennessee. There is no doubt but all the requirements in the statute were to be complied with in Kentucky. For it is plain from the construction given to the sections of these statutes by the Court of Appeals of Kentucky, that certain conditions precedent were necessary, after the articles of corporation were filed, to bring such corporation into lawful existence, and where these conditions have not been met there is no corporation, and the property claimed to be corporate could be levied on or otherwise dealt with as belonging to those claiming to be stockholders. The court says:

"Sections 5 and 6, ch. 56, general statutes, require as a precedent condition to the validity of the acts of such corporation, that notice shall be published for at least four weeks in some newspaper, as convenient as practicable to the principal place of business, stating the name, general nature, amount of capital stock, whether private property is to exempt from debts, etc., of the corporation.

"Such notice must contain the essentials of the corporation." (Heinig *v.* Adams Westlake Mfg. Co., 81 Kentucky, 300.)

See also upon the same point: Mokelumne Hill Mining Co. *v.* Woodbury, 14 Cal., 424; Clegg *v.* Hamilton, etc., 61 Iowa, 121; Bank *v.* Orcutt, 48 Barb., 256; Miller *v.* Ewer, 27 Me., 509.

Substantial compliance with the provisions of the general statutes of Kentucky not having been made by "The Empire Coal and Mining Company," it never became a corporation, not even *de facto*, but has been used fictitiously by the five individual appellees herein, who own all of its pretended stock, for their fraudulent purposes as alleged in the bill. That "no organization" of said "Empire Coal and Mining Company" was effected or attempted to be effected in the State of Kentucky under the pretended charter, but that all acts done and attempts at organization were held in the State of Tennessee, where all the said directors and stockholders resided, is well pleaded and admitted by the demurrer, and the decree should be reversed. (Boyd *v.* Nebraska, *ex rel.* Thayer, 143 U. S., 135.)

The other ground of demurrer, namely, that the appellant is estopped from denying the corporate existence of "The Empire Coal and Mining Company" while making it a party to the bill, should not be sustained. It is true there is a section of the general statutes of Kentucky which provides that the existence of a corporation organized under such statutes can not be questioned either by bill or plea, but this is not applicable to "The Empire Coal and Mining Company," which, as is admitted, was not organized under such statutes, and never, therefore, became a corporation at all. And the relief prayed for in the bill is not of such a character as to bring the appellant within the general principle of the law upon estoppel in this respect. The appellant has not contracted with the so-called "Empire Coal and Mining Company," nor has it reaped the benefit in any

manner whatever of contracts made with it. The prayer is that "The Empire Coal and Mining Company" may be declared to be a partnership consisting of the five individual appellees, and that they may be required to account to appellant as such partners, doing business under the name and style of "The Empire Coal and Mining Company," etc. (Rec., 85.)

There is nothing in the issues of the cause, as made by the bill and demurrer, that estops the appellant from asking for and obtaining this relief. The general rule, therefore, that one who contracts with a corporation in the use of its corporate powers and franchises, and within the scope of such powers, is estopped from denying its corporate existence or inquiring into the regularity of its organization when an enforcement of the contract, or a right arising under it, is sought, does not apply in this suit.

This suit has no relation whatever to a contract, or to any benefits that might be derived therefrom, so far as the appellant is concerned. Besides, it was held in National Bank of Metropolis *v.* Orcutt, 48 Barb., 256, that the legal existence of a corporation might be attacked and the question of its validity tried and determined in the manner in which it is sought to be done in this cause, inasmuch as the requirements of the law may not have been so exactly complied with as to make the organization of the corporation a valid one.

Outside of and beyond all this the question of citizenship raised here by the demurrer, it seems, was misapprehended by the court below.

Taking it as a fact these two companies were organized under the Kentucky laws and had their domiciles there, yet the defendant company, so-called, was doing business in the State of Tennessee, and was, therefore, suable in the United States Court in that State, and the question comes then directly within the ruling of this

court in *Ex parte* Schollenberger, 96 U. S., 369 *et seq.*, and afterwards in New England Insurance Co. *v.* Woodworth, 111 U. S., 138; and this court in Shaw *v.* Quincy Mining Co., 145 U. S., 444, passing upon the act of March 3, 1887, as corrected by that of August 13, 1888—two statutes passed since this suit was instituted and while this suit was in progress in the court below—recognized these two cases (96 U. S. and 111 U. S., *sup.*) as sound upon the statutes existing when this suit was brought, and it must be manifest that in any view taken of the subject the jurisdiction exists.

A reversal of this case, with directions to the court below to enter a decree for appellant as prayed for, is respectfully asked.

A. H. Garland,
H. J. May,
For Appellant.